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ACTION AGAINST NATIONAL AND TRANSNATIONAL ECONOMIC AND ORGANIZED CRIME, AND THE ROLE OF CRIMINAL LAW IN THE PROTECTION OF THE ENVIRONMENT: NATIONAL EXPERIENCES AND INTERNATIONAL COOPERATION

Working paper prepared by the Secretariat

Summary

In pursuance of Economic and Social Council resolutions 1993/32 and 1994/19 and General Assembly resolution 49/157, the present working paper provides an overview of the dangers posed by national and transnational organized and economic crime, outlining major trends and major developments. The working paper identifies a number of illicit activities that pose severe threats to the environment. In addition, it presents an analysis of the role that criminal law can play in the protection of the environment. Finally, it provides a review of present national and international initiatives taken to combat all these forms of criminality, thus providing the background for the discussion and identification of related strategies for crime prevention and control, which should further strengthen international cooperation.

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INTRODUCTION

1. At a time when the world is undergoing rapid and dramatic changes, the issue of transnational, economic and organized crime has assumed particular importance. Awareness of the impact that these forms of crime have on national efforts to develop free market economies and on international initiatives aimed at liberalizing world trade is growing, and is often accompanied by consternation over the difficulty of reacting effectively. Concern about criminal acts and gross negligence that result in environmental damage is increasing, particularly in view of the long-term implications that such damage can have.

2. Realization of the impact and cost of these forms of criminal behaviour is leading to an increased willingness of the international community to come to terms with them and to take action. Difficulties that vary in extent and nature are being encountered by States, depending on the degree of their economic development and on the capacity of their regulatory and criminal justice systems. The activities of the United Nations and other international bodies reflect both the increase in concern about the problem and the interest of the international community in overcoming difficulties and working together towards effective prevention and control of these forms of crime.

3. "Action against national and transnational economic and organized crime, and the role of criminal law in the protection of the environment: national experiences and international cooperation" was included as an item of the provisional agenda for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was finalized by the Commission on Crime Prevention and Criminal Justice at its second session and approved by the Economic and Social Council in its resolution 1993/32. Thus, the Ninth Congress will build on other major initiatives, such as the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: a Global Approach, held at Courmayeur, Italy, from 18 to 20 June 1994, and the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994. Corruption is another issue that is re-emerging as a priority concern of both Governments and international organizations. The Council, in its resolution 1993/32, decided to include in the programme of work of the Ninth Congress a one-day discussion in plenary meeting on experiences in and practical measures aimed at combating corruption involving public officials. The one-day discussion devoted to this matter will constitute a forum in which Governments, and intergovernmental and non-governmental organizations, as well as experts, will be able to exchange experiences and views on effective and concerted action. Closely related to the discussion on combating corruption involving government officials will be an introductory session on technical cooperation projects, to be held at the Ninth Congress prior to the convening of the workshops. There is a growing realization among the international community that effective action against forms of crime that are no longer contained by national frontiers should be a joint endeavour. The success of efforts against all forms of transnational crime depends, to a large extent, on the ability of all States to confront such forms of crime, which in turn hinges on the capacity of their criminal justice systems and of their regulatory mechanisms. Technical cooperation and assistance to increase that capacity to levels that would permit adequate responses to transnational crime are prerequisites to effective international cooperation at all levels. The discussion on technical cooperation will deal with the issue in all its aspects. The discussion in the present paper is, therefore, limited to the forms of practical assistance required for preventing and controlling organized and economic crime and for enhancing the role of criminal law in protecting the environment.

4. Economic and organized crime, as well as criminal offences against the environment, share certain key elements. For example, their impact is rarely limited to areas within national frontiers, even in cases where there are no transboundary aspects in the commission of such offences. They are all areas in which technology now plays a major role. Computer and communications technology is employed by transnational criminal organizations to orchestrate illicit activities around the world. Such technology is also used in commercial or large-scale fraud and computer crime. Technology also presents a constant challenge in regulating industry and in disposing of and treating the by-products of manufacturing processes in an effort

to ensure the protection of the environment. Another shared element is the reality that further international attention must be drawn to them without delay because of steady increases in their frequency, magnitude and severity.

5. The Ninth Congress will provide a unique opportunity for States to share their experiences in these areas and make progress towards greater international cooperation in dealing with them, by sustaining and further advancing the momentum built in recent initiatives of the United Nations.

6. The purpose of the present working paper is to set out the relevant background to each of the issues under item 4 of the provisional agenda for the Ninth Congress, to describe some of the recent developments relating to them and to offer some observations on measures that States may wish to discuss as possible means to deal with the issues.

I. BACKGROUND

7. The first involvement of the United Nations in the issue of the various forms of transnational crime dates back to the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva from 1 to 12 September 1975. Under item 5 of its agenda, the Fifth Congress examined the changes in forms and dimensions of criminality, transnational and national. The focus then was also on crime as business at the national and transnational levels: organized crime, white-collar crime and corruption. It was noted that, in addition to ordinary criminals who escaped detection, there were powerful perpetrators of harmful acts who wielded their power and influence with impunity to the detriment of the community as a whole. Crimes of corporations and "organized" or syndicated crime had many similarities; both might involve the corruption of law enforcement and political authority. They also tended to be characterized by a high degree of secrecy and, as "invisible" crimes, they were difficult to detect.[1]

8. "Crime as business" was recognized as a more serious threat to society and national economies than traditional forms of crime. While crime as business was a serious problem in many developed countries, in developing countries the national welfare and economic development of the entire society might be drastically affected by such criminal conduct as bribery, price-fixing, smuggling and currency offences. Definitions of terms relating to that type of crime were often vague and ambiguous, as the issue had been neglected by criminologists.[2]

9. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 25 August to 5 September 1980, in its discussion of agenda item 5, entitled "Crime and the abuse of power: offences and offenders beyond the reach of the law", added new elements to the international perception of organized crime. Emphasis was placed on the concept of abuse of power in its various forms: political, economic and social. Abuses of economic, social and political power were often interlinked. For example, economic crime served as a causal and aggravating factor in the corruption of the governmental process and of public officials.[3]

10. Among offences beyond the reach of law discussed under agenda item 5 of the Sixth Congress, there were those legally defined as crimes but with respect to which law enforcement agencies were relatively powerless because of the high economic and political status of their perpetrators, or because the circumstances under which they had been committed were such as to decrease the likelihood of their being reported or prosecuted. Organized crime, bribery and corruption were among the first examples mentioned in the discussion.[4]

11. The issue was considered further by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985, under topic 1, entitled

"New dimensions of criminality and crime prevention in the context of development: challenges for the future". It was emphasized that multiple illicit operations carried out by international criminal networks represented a major challenge to national law enforcement and to international cooperation. National boundaries no longer constituted effective barriers against those criminal activities. By exploiting the discrepancies in the legislation of different countries, organized crime achieved a high degree of impunity.[5]

12. The Seventh Congress adopted the Milan Plan of Action,[6] in which it recognized the international dimensions of crime and the need for a concerted response from the international community in reducing the opportunities to commit crime. It also emphasized how certain forms of crime could hamper the political, economic, social and cultural development of peoples and threatened human rights, fundamental freedoms, and peace, stability and security. The United Nations had a significant role to play and its contribution to multilateral cooperation in that field should be made more effective. States were urged to implement the Milan Plan of Action, as the collective endeavour of the international community to deal with a major problem whose disruptive and destabilizing impact on society was bound to increase unless concrete and constructive action was taken on an urgent and priority basis.[6]

13. In 1990, within the framework of its topic III, "Effective national and international action against: (a) organized crime; (b) terrorist criminal activities", the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana from 27 August to 7 September 1990, examined the problem of organized transnational crime in the light of new historic developments. The rapid increase in the number of independent countries, together with a true internationalization of criminal activities, had created the need for new international institutions that could introduce a measure of order and enhance the effectiveness of crime prevention efforts.[7]

14. More effective cooperation in crime prevention was possible, as had been demonstrated by some initiatives at the subregional level. Political will and the willingness to revise certain traditional approaches were necessary, together with substantial increases in technical cooperation at all levels. All countries had to be put in a situation in which they could participate effectively in the cooperative network. The United Nations crime prevention and criminal justice programme had to be strengthened to respond to the rising number of requests for assistance.[7]

15. A substantive step towards international cooperation was made in 1990, when the General Assembly adopted the Model Treaty on Extradition (Assembly resolution 45/116, annex), the Model Treaty on Mutual Assistance in Criminal Matters (Assembly resolution 45/117, annex), the Model Treaty on the Transfer of Proceedings in Criminal Matters (Assembly resolution 45/118, annex) and the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (Assembly resolution 45/119, annex). In its resolutions, the General Assembly invited Member States to take the model treaties into account when establishing treaty relations with other States, and urged them to strengthen international cooperation in criminal justice. The General Assembly also adopted resolution 45/123, on international cooperation in combating organized crime, in which it urged Member States to give favourable consideration to the implementation of the Guidelines for the prevention and control of organized crime,[8] adopted by the Eighth Congress, and invited Member States to make available to the Secretary-General, on request, the provision of their legislation relating to money-laundering, the tracing, monitoring and forfeiture of the proceeds of crime and the monitoring of large-scale cash transactions and other measures so that they may be made available to Member States desiring to enact or further develop legislation in those fields.

16. On the basis of the above-mentioned appeals for cooperation in combating transnational crime, the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime was held at Smolenice,

Czechoslovakia,* from 27 to 31 May 1991. The Meeting, attended by experts representing the five geographical regions of the United Nations and by representatives of the International Criminal Police Organization (ICPO/Interpol), strongly emphasized the urgent need to respond more effectively to transnational criminality, as the legal tools available to Governments were often not suitable for effectively combating new transnational manifestations of criminality. The Meeting adopted a number of recommendations covering national, regional and international action to contribute to closer international cooperation (see Economic and Social Council resolution 1992/23, annex I). From 21 to 25 October 1991, law enforcement officials and experts from 15 countries and ICPO/Interpol attended an International Seminar on Organized Crime, held at Suzdal, Russian Federation. The practical measures against organized crime formulated during the seminar included considerations concerning the nature, extent and impact of the problem. The Seminar called for action in the fields of legislation, law enforcement methods, organizational structures, international cooperation and evaluation of the gravity of the threat posed by organized crime (see Economic and Social Council resolution 1992/23, annex II).

17. The General Assembly, in its resolution 46/152, took note of the report of the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme (see A/46/703 and Corr.1) and approved the statement of principles and programme of action, annexed to that resolution, which, *inter alia*, called for the establishment of a commission on crime prevention and criminal justice. The Economic and Social Council, by its resolution 1992/1, established the Commission as one of its functional commissions. On the recommendation of the Commission at its first session, the Council adopted resolution 1992/22. In section VI of that resolution, the Council underlined the importance of international cooperation to counteract crime and determined that one of the priority themes to guide the work of the Commission in the development of a detailed United Nations crime prevention and criminal justice programme should be national and transnational economic and organized crime, including money-laundering, and the role of criminal law in the protection of the environment.

18. On the recommendation of the Commission at its first session, the Economic and Social Council adopted resolution 1992/23, in which it took note of the recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime and the International Seminar on Organized Crime and requested the Secretary-General to continue the analysis of information on the impact of organized criminal activities upon society at large. The Commission, in its resolution 1/2, on control of the proceeds of crime, requested the Secretary-General, *inter alia*, to examine the possibility of coordinating efforts made at the multilateral level against the laundering of proceeds of crime and related offences and to propose means for rendering technical assistance to requesting Member States in drafting legislation, training law enforcement personnel, developing regional, subregional or bilateral cooperation and providing advice on relevant strategies and techniques.

19. The General Assembly, in its resolution 47/87, requested the Commission on Crime Prevention and Criminal Justice to organize the ongoing review and analysis of the incidence of transnational organized criminal activity and the dissemination of information thereon and called upon Member States, international organizations and interested non-governmental organizations to cooperate closely with the United Nations in organizing practice-oriented workshops, research projects and training programmes to deal with specific aspects of organized criminal activities.

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*Czechoslovakia was an original Member of the United Nations from 24 October 1945. In a letter dated 10 December 1992, its Permanent Representative informed the Secretary-General that the Czech and Slovak Federal Republic would cease to exist on 31 December 1992 and that the Czech Republic and the Slovak Republic, as successor States, would apply for membership in the United Nations. Following the receipt of its application, the Security Council, on 8 January 1993, recommended to the General Assembly, that the Czech Republic and the Slovak Republic should be admitted to United Nations membership. The Czech Republic and Slovakia were thus admitted on 19 January 1993 as Member States. Smolenice is now in Slovakia.

20. The Economic and Social Council adopted a number of resolutions on the recommendation of the Commission at its second session. In its resolution 1993/29, the Council requested the Secretary-General to organize a World Ministerial Conference on Organized Transnational Crime, to be held in Italy in 1994, the Government of Italy having offered to act as host.

21. In its resolution 1993/30, the Economic and Social Council requested the Crime Prevention and Criminal Justice Branch, *inter alia*, to consider the possibility of assisting Governments, at their request, in developing guidelines for the detection, investigation and prosecution of the laundering of the proceeds of crime and to provide technical assistance to Member States, upon request, in drafting, revising and implementing relevant legislation, in organizing special investigation teams and in training law enforcement, investigative, prosecutorial and judicial personnel. The Council, in its resolution 1993/31, and the General Assembly, in its resolution 48/103, reaffirmed the importance of the United Nations crime prevention and criminal justice programme and the crucial role it has to play in promoting international cooperation in crime prevention and criminal justice and in responding to the needs of the international community in the face of both national and transnational criminality.

22. Transnational crime was also discussed by the Commission at its third session. On the recommendation of the Commission, the Economic and Social Council adopted resolution 1994/12, on organized transnational crime. The annex to that resolution contained a discussion document on the World Ministerial Conference on Organized Transnational Crime, highlighted the importance of the World Ministerial Conference as a means of reaching agreement on the adoption of a series of measures against organized crime, including the establishment of a common perception of organized crime within the international community; the punishment, under national law, of participation in a criminal organization; confiscation of the proceeds of crime; the development of investigative methods to penetrate criminal organizations and of specialized investigative units; the development of international agreements on extradition, mutual legal assistance and improvement of the practical application of existing model treaties in those fields; the development of technical cooperation, including the international exchange of intelligence and the training of law enforcement personnel; economic compensation for victims; and the feasibility of elaborating international instruments, including conventions, against transnational crime.

23. On the recommendation of the Commission at its third session, the Economic and Social Council also adopted resolution 1994/13, on the control of the proceeds of crime. In that resolution, the Council recommended that the World Ministerial Conference on Organized Transnational Crime should take into account the conclusions and recommendations of the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: a Global Approach. The Council also requested the Secretary-General, taking into account the work already carried out by Member States and inter-governmental organizations, to cooperate with them in disseminating principles and issues that should be addressed in substantive and procedural legislation on prevention and control of the laundering of the proceeds of crime and the control of such proceeds for incorporation in national penal and procedural codes by Member States wishing to do so.

24. On the recommendation of the Commission at its third session, the Economic and Social Council also adopted resolution 1994/14, on criminal justice action to combat the organized smuggling of illegal migrants across national boundaries. In that resolution, the Council expressed its concern about the increasing activities of transnational criminal organizations that profit illicitly by smuggling humans. The Council called upon Member States and relevant specialized agencies and international organizations to cooperate at the bilateral and multilateral levels in addressing all aspects of the problem of the organized smuggling of illegal migrants; and it urged States to take prompt and effective steps to frustrate the objectives and activities of those organizing the smuggling of illegal migrants.

25. In its resolution 3/2, on international traffic in minors, the Commission, aware that international traffic in minors was carried out by criminal organizations that had transnational connections and calling upon Member States to consider ways of enacting legislation to combat such traffic and to promote cooperation among States, decided that international traffic in minors should be considered by the Commission at its fourth session in the context of its discussion on the question of organized transnational crime.

26. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[9] represented one of the first binding international instruments drawn up to combat transnational criminal organizations and one of their most lucrative activities. The 1988 Convention contains provisions on, *inter alia*, laundering of the proceeds of drug trafficking, a criminal offence, and on international cooperation and assistance, including extradition, mutual legal assistance and the transfer of proceedings. The General Assembly, in its resolution S-17/2, adopted the Political Declaration and the Global Programme of Action on international cooperation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, activities that strengthened transnational criminal organizations.

27. As for the role of criminal law in the protection of the environment, the legislative developments that have resulted in this topic being included in the provisional agenda for the Ninth Congress date back to the formative years of the United Nations. In the Universal Declaration of Human Rights, article 25, adopted and proclaimed by the General Assembly in its resolution 217 A (III), it is stated that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.

28. The United Nations Conference on the Human Environment, held at Stockholm from 5 to 16 June 1972, recognized the right to a secure and ecologically balanced environment and the duty to protect and improve the environment. The Stockholm Conference acted as a catalyst for the establishment of the United Nations Environment Programme to assist in giving substance and content to the principles that the Conference espoused.

29. The United Nations Conference on Environment and Development, also referred to as the Earth Summit, was held at Rio de Janeiro, Brazil, from 3 to 14 June 1992, two decades after the Stockholm Conference. More than 170 States were represented at the Earth Summit, as well as a large number of non-governmental organizations. Two treaties were opened for signature: the United Nations Framework Convention on Climate Change (A/AC.237/18 (Part II)/Add.1 and Corr.1, annex I) and the Convention on Biological Diversity.[10] In addition, the Earth Summit adopted the Rio Declaration on Environment and Development[11] and Agenda 21,[12] a guideline for future national and international action in the field of environment and development. The Earth Summit also agreed on new institutional arrangements to investigate the extent to which States were fulfilling their obligations under Agenda 21. The Economic and Social Council, in its decision 1993/207, having considered the note by the Secretary-General (E/1993/14), and in accordance with General Assembly resolution 47/191, decided to establish the Commission on Sustainable Development as a functional commission of the Council with the functions enumerated in paragraphs 3-5 of General Assembly resolution 47/191.

30. The Rio Declaration contained 27 principles on state and interstate behaviour that had not previously been universally accepted. Agenda 21 contained specific objectives and activities for the development of appropriate legal and regulatory measures.*

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*See *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. 1: *Resolutions adopted by the Conference*, resolution 1, annex II, chap. 39. For an analysis of the results of the discussions at the Earth Summit and future directions, see L. Compiglio and others, eds., *The Environment after Rio: International Law and Economics* (London, Graham and Trotman, 1994).

31. It is against this background that the Commission on Crime Prevention and Criminal Justice and the United Nations congresses on the prevention of crime and the treatment of offenders have become involved in global efforts to protect the environment. The Eighth Congress adopted a resolution entitled "The role of criminal law in the protection of nature and the environment".[13] Subsequently, within the framework of the United Nations crime prevention and criminal justice programme, a range of activities have been undertaken to enhance the protection that criminal law may afford in this area. As mentioned earlier, on the recommendation of the Commission at its first session, the Economic and Social Council adopted resolution 1992/22, in section VI of which it determined that national and transnational crime, organized crime, economic crime, including money-laundering, and the role of criminal law in the protection of the environment should be one of the priority themes to guide the work of the Commission in the development of a detailed programme.

32. The Economic and Social Council, in its resolution 1994/15, invited Member States and relevant bodies, when developing criminal laws related to the environment, to consider the recommendations concerning the role of criminal law in protecting the environment, made by the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, held at Vienna from 7 to 10 December 1993,* contained in the annex to that resolution. According to one of those recommendations, environmental criminal law should be aimed at promoting all the important components of the environment; it should be directed, in particular, to the regulation, control and, where necessary, the complete prohibition of hazardous activities, including the establishment and operation of hazardous installations, and the illegal import, export, movement and disposal of hazardous materials and wastes.

II. ORGANIZED CRIME

33. Concern about the impact and effect of organized crime has increased in recent years. There are three main reasons for this. First, there has been an increase in the ease with which various activities can be carried out across borders. This is explained, in part, by technological advances in such areas as international transportation and communication. While these advances have created opportunities for legitimate economic growth through trade and international cooperation in many areas, they have also facilitated illicit activities.

34. Secondly, transnational criminal organizations have increased in size, sophistication and economic power in recent years. Many of them resemble major multinational corporations and often have a similar managerial hierarchy. At the same time, however, their structures are typically fluid, permitting them to relocate or to react quickly to law enforcement efforts or to the emergence of new opportunities for making illicit profits. In some cases, criminal organizations enter into strategic alliances with other entities, just as businesses or governments do. This gives them a further opportunity to benefit from economies of scale in their operations as well as the flexibility needed to enter and exit a market swiftly.

35. Thirdly, transnational criminal organizations are involved in activities of an increasingly dangerous nature. The primary concern 20 years ago was the drug trafficking industry. At present, concerns relate to such activities as the smuggling of nuclear material, the illicit disposal of hazardous waste and trafficking in human organs. In addition, organized crime has long been involved in other activities, including prostitution, racketeering, "protection" schemes, illegal gambling, extortion, lending money at exorbitant interest rates and drug trafficking.

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*The present working paper is based to a substantial degree upon the deliberations of the Ad Hoc Expert Group and upon those of the International Meeting of Experts on the Use of Criminal Sanctions in the Protection of the Environment, Internationally, Domestically and Regionally, held at Portland, Oregon (United States of America), from 19 to 23 March 1994.

36. As a result of these factors combined, the overall impact of transnational crime on society has been growing and, in the absence of strong international efforts to curtail it, will continue to grow.

A. Major trends and developments

37. It would be impossible to draw up a list of all the activities that transnational crime encompasses. Some of them, however, particularly deserve attention.

38. In addition to being a major source of income for most transnational criminal organizations, illicit drug activities can best be understood as an industry, with distinct stages of production and distribution at the wholesale and retail levels. It is also a lucrative industry, largely because there is limited competition among the entities concerned and little threat of substitute products emerging and because both the supplier of the raw materials and the consumers of the final product have limited power.* The money from the drug trafficking industry goes largely to the trafficking organizations. The peasants who actually cultivate the coca bushes and the opium poppy receive a modest income, though it is higher than the profits to be made growing other crops. The emergence of drug trafficking as an industry with annual profits measured in billions of United States dollars has given a great boost to the development of transnational criminal organizations and has also led to the emergence of money-laundering. There are also increasing signs of a growing linkage with other kinds of trafficking, especially arms trafficking. Furthermore, drug money has been a major source of the government corruption that helps to provide secure home bases for transnational criminal organizations.

39. One of the most serious developments in transnational crime has been the increase in trafficking in people. There are several dimensions to this, the first of which concerns the issue of illegal migrants. It has been estimated that criminal organizations are attempting to smuggle as many as 1 million people a year out of poorer countries and into wealthier countries. Not only does this threaten a basic ingredient of national sovereignty, but it also places the migrants themselves in grave danger.

40. Moreover, the migrants are subjected to hardship, deprivation and indignities. The more vulnerable persons among them, particularly women, are often forced into sexual slavery. Even those who arrive at their destination often owe money to their smugglers and are forced to engage in criminal activities to pay off their debts. Although this problem has received a great deal of attention in some countries, largely in relation to Chinese migrants, it is not only a problem in the United States of America or in countries in Europe and it does not involve only Chinese migrants.**

41. According to some estimates, migrants from China form only 20 per cent of those in a pipeline that encompasses India, Iran (Islamic Republic of), Iraq, Pakistan, Romania, Sri Lanka and Sudan. Those in transit include 60,000 Chinese in Moscow, 80,000 or more Africans and Asians in Romania and a significant number of other migrants in staging areas such as Guatemala, the Netherlands and Spain. The scale of the problem is also revealed by the fact that in 1993 there were 1.2 million attempts to enter the United States illegally. Moreover, smuggling organizations offer substantial bribes to officials and are ingenious at developing new smuggling routes through Mexico and the Caribbean. One estimate has suggested that such trafficking yields an annual profit of some US$ 3.5 billion.[14]

42. For the destinations, and sometimes for the transit States, however, such trafficking imposes significant unexpected costs in terms of medical care, food, housing and transportation for the illegal migrants. The

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*For a fuller analysis of the industry, see Phil Williams, "International drug trafficking: an industry analysis", *Journal of Low Intensity Conflict and Law Enforcement*, forthcoming.

**For an overview of measures to combat the smuggling of aliens, see the report of the Secretary-General (A/49/350).

problem has reached such levels that it is in danger of provoking a major backlash against legal immigrants and legitimate refugees.

43. The difference between the licit and the illicit supply of armaments is not always clear. As with chemical capabilities and the capabilities required to develop nuclear weapons, it often has more to do with who the end-user is than with the product itself. In some cases, the end-user may be a rogue State that the international community is trying to isolate; in others, it may be an ethnic group trying to circumvent an arms embargo. Whoever the end-user may be, however, arms deals on the black market have three characteristics: they are covert, a large part of their cost is related to the surreptitious nature of the transaction and the profits that they yield are laundered.[15]

44. In addition to their other ramifications and the sizeable profits that they generate, such transactions can have a significant effect on local and regional conflicts and on the capacity of terrorist groups to pursue their goals and to threaten peace and security. The involvement of ethnic groups in drug trafficking for the purpose of purchasing weapons seems to be increasing. As noted in the discussion guide for the Ninth Congress (A/CONF.169/PM.1 and Corr.1, para. 40):

> "There is abundant evidence that organized crime is involved in the illegal arms trade and subversive activities that tamper with the rule of law in different parts of the world. The weight of the evidence indicates that it contributes to the political turmoil and upheaval occurring throughout the world. Drugs for weapons deals have become common in the world of organized crime, and many ethnic and political conflicts are aggravated by this unholy alliance."

45. The importance of these activities lies in their potential for major disruption and the consequent threat that they pose to security and stability at the national and international levels. There is no telling whether organized criminal groups will resort to creating political turmoil as a defence against successful efforts of law enforcement agencies.

46. The illicit traffic in firearms has also reached alarming proportions. The implications of such activity are numerous, ranging from an increase in violent crime to a direct threat to national security, depending on the volume and the end-users of the firearms. National efforts at curtailing the production and at controlling the availability of firearms are becoming more intense worldwide. Recent initiatives have attracted considerable debate and, in some instances, have already begun to yield positive results. There appears to be a steady increase in crime involving firearms in a growing number of countries, suggesting that control mechanisms aimed at domestic firearm production and distribution may not be adequate to deal with the movement of firearms across borders. It is becoming more and more necessary for the international community to focus its attention on the flow of firearms across national frontiers, to increase and consolidate its knowledge of the issue and to consider concerted action against illicit trafficking in firearms.

47. Trafficking in nuclear material is a major problem that has provoked considerable alarm. The possibility that weapon-grade nuclear material might be passed to terrorist groups or pariah States attempting to acquire some kind of strategic nuclear capability is a matter of considerable concern to the global community. The Bundeskriminalamt of Germany made a detailed analysis of the problem, part of which was made public in a testimony by the President of the German Federal Police. According to the testimony, in Germany in 1992, there were 59 fraudulent offers of radioactive material, 99 cases involving illicit trafficking in such material and 18 seizures of such material. In 1993, there was in Germany a total of 241 cases, comprising 118 fraudulent offers of radioactive material and 123 cases involving illicit trafficking in such material, and 21 seizures of such material (3 of which involved material from Germany and not from the former Union of Soviet Socialist Republics). In 1993, 545 suspects were identified, 47 per cent of whom were non-German, predominantly Czech, Polish and Russian nationals.[16]

48. The threat appears to be a serious one, a point underlined by recent developments. According to reports in July 1994, German police searching for counterfeiters found one fifth of an ounce of weapon-grade plutonium, the first case to involve fissile material.[17] The seizure of the plutonium in 1994 as well as that of the neutron emitter, californium 252, in 1993 suggests that the material being trafficked is becoming more diverse. On 10 August 1994, German police seized 350 grams of weapon-grade nuclear material (mixed-oxide fuel for reactors, containing plutonium enriched to 87 per cent) and arrested one Columbian and two Spaniards. Another incident, involving a considerably smaller quantity of nuclear material, but of the same quality, occurred two days later.[18] The presence of individuals of different nationalities adds an alarming element to the issue, leading the authorities to speculate on the involvement of organized criminal groups from various countries and the possibility of links and cooperation arrangements between them. On 29 August 1994, the Hungarian authorities seized nuclear material in a hotel room at Budapest, an incident suggesting that the illicit trafficking in nuclear material is not confined to certain countries. The German and Russian authorities reacted to the smuggling of nuclear material by concluding a bilateral cooperation agreement on 25 August 1994.

49. Trafficking in nuclear material has considerable potential for extortion, as well as for significant environmental damage, if only as a result of improper handling of the material. Although there are questions about whether there is actually an illicit end-user market, at least in Germany, there is a danger that the organization responsible may try another tack if purchasers cannot be found and the material is available; extortion may then appear particularly attractive. The fact that nuclear material is often procured from government-controlled installations in the Russian Federation suggests the involvement of criminal organizations in search of profits. If they cannot obtain the profits in one way, then attempting to obtain them through some kind of nuclear blackmail is only a small step away. As nuclear disarmament continues, the availability of nuclear material is likely to increase rather than decrease.

50. Prostitution has long been a major element in the activities of criminal organizations at the national level, and it is no surprise that it also has major international dimensions. Both the Chinese triads and the Japanese Yakuza are particularly active in this area and have held women as slaves in the sex tourist industry in the Philippines, the Republic of Korea and Thailand. Such trafficking treats women as commodities that have a market value: "Sex work is not there by accident, sex work plays a great part in the world economy where women and children are seen as sources of pleasure and spare parts for the developed world."[19]

51. A variant on this, but one that tends to be more tangential to criminal organizations, involves parents selling their children as brides, often to wealthy men from other countries. Adoption, too, is something that needs more careful scrutiny and regulation as, according to several reports, international adoption has become a million-dollar business, in which babies from Central and South America fetch up to US$ 20,000. In Guatemala, for example, there have been about 30 cases a year involving false mothers offering their children for adoption. Concern about trafficking in babies has created a climate of suspicion and hysteria in some countries and has led to attacks on foreigners wrongly suspected of kidnapping.

52. One reason for the climate of suspicion about kidnapping has been concern that abducted children will be killed for their body parts. Although there is little evidence that that has taken place, there is a lucrative trade in human body parts on the black market, especially in Argentina and the Russian Federation. In Argentina, for example, there have been serious transplant abuses, often involving the removal of corneas from patients who had been declared brain-dead following fabricated brain scans.[20]

53. The problem of trade in human body parts is perhaps even greater in the Russian Federation, especially as there have been as many as 4,000 unclaimed bodies in Moscow morgues. One investigation found a company that had extracted 700 organs such as kidneys, hearts and lungs, over 1,400 liver sections, 18,000 thymus organs, 2,000 eyes and over 3,000 pairs of testicles. Moreover, one Moscow forensic detective considered such activities to be firmly under the control of organized crime, which he suggested

had elaborate criminal structures for kidnapping children and adults, using their organs for transplants and for medical experiments. He even suggested that human organ transplantation was the most profitable business in the Russian Federation and that it would continue to grow.[21]

54. There have also been cases of human organs being exported using false documents and confirmed cases of trafficking in human body parts in Argentina, Brazil, Honduras, Mexico and Peru, largely involving German, Italian and Swiss buyers. The potential for corruption in medical communities is enormous and will remain so until rules governing the purchase or sale of human organs are systematically developed and implemented.

55. Another significant problem involves the theft and smuggling of motor vehicles. The prevailing pattern in motor vehicle smuggling is the opposite of that in illicit drug trafficking, the cars being stolen in developed States and sent to developing countries or countries in transition. This has proved to be a big problem in the territory of Hong Kong, where luxury cars are stolen and transported to China on extremely fast boats. It has also become a big problem in Europe, where the number of motor vehicle thefts almost tripled between 1989 and 1993. The proportion of stolen motor vehicles that are permanently missing - at present more than 40 per cent - is an indicator of the amount transported to other countries. It is also a serious problem in many African countries.

56. Eastern Europe has become one of the main areas for the movement of stolen motor vehicles, Poland being the central point of the illegal transport route. From there, the motor vehicles are taken to Estonia, Kazakhstan, Latvia, Lithuania, Russian Federation or Ukraine, or even to the Caucasus. Bulgarian and Russian criminal groups have become a major force in this area of transnational crime. The same problem also exists in the United States, where the low apprehension, prosecution and conviction rate of auto thieves make this crime a booming industry, with high profits and low risks. The results are evident in the receiving countries: for example, in one Caribbean country, a survey conducted by various law enforcement agencies determined that approximately one out of every five motor vehicles on the docks awaiting clearance showed clear signs that it had been stolen and shipped from the United States. For vehicles worth over US$ 15,000, the rate increased to nearly four out of five.[22] While less serious than some of the other activities of organized crime, car theft is an additional source of revenue that helps organized criminal groups to consolidate their positions in certain countries.

57. Not all the activities undertaken by transnational criminal organizations have been mentioned. For example, the illegal animal trade, the theft of and trafficking in cultural objects or art, and precious metals smuggling have all been omitted, as have activities such as the kidnapping of businessmen or the theft of intellectual property through large-scale software piracy. Other areas of criminal activity are old-fashioned piracy on the high seas, for instance in the Straits of Malacca, counterfeiting and activities such as moving stolen cattle across national borders in Africa. This is not to denigrate the importance of those activities, all of which deserve much more attention. The intent, however, has been to provide a sample of the range of major operations that fall under the category of transnational crime and that are undertaken by transnational criminal organizations.

B. Transnational criminal organizations and terrorism

58. Terrorist operations, at both the national and international levels, attempt to destroy institutions and to undermine public administration at all levels. Terrorist attacks appear to have a common element: they take advantage of the horror created by disproportionate, organized and extreme violence in surroundings that, by themselves, create a sense of helplessness. The indiscriminate loss of life is not always ancillary or incidental to the achievement of the intended objective; it is a calculated result, intentional and foreseen. It is aimed at making the act sensational enough to attract publicity. The underlying concepts are that violence and death are the price for supporting policies and that the responsibility for government actions lies with all its citizens.

The technique has been used extensively by terrorist groups in efforts to mobilize support and to find some justification for their action.

59. The problem of terrorist criminal activities has been a focus of international attention and debate for decades. Its political complexity and the divergence of views on the subject have hindered effective counteraction. In recent years, efforts aimed at achieving consensus had been frustrated by unfavourable conditions in international relations and the rift caused by the cold war. In spite of long-standing efforts in various forums and earnest attempts on the part of numerous scholars to assist in the process, the formulation of a universally acceptable definition of terrorism has to date eluded the international community.

60. One approach that has been advanced in the past and partly adopted in efforts to combat terrorism is based on the principle that terrorist violence in all its forms and manifestations, irrespective of reasons, goals or motivation, should be considered to be of a criminal nature and, as such, should be condemned and should be subject to prosecution. The approach consists in identifying particular acts of terrorism on which agreement exists and in establishing measures against them. It presents the practical advantage that, because of the impact of certain acts, Governments agree, or may be willing to agree, on proscribing as crimes in their national legislation certain forms of conduct. Describing such acts would provide a basis on which to build consensus and to establish mechanisms for the effective prevention and control of the phenomenon, while theoretical endeavours to formulate an all-encompassing definition continue.

61. In view of the growing transnational dimension of the phenomenon, measures against terrorism are needed both nationally and internationally. Studies of the patterns and methods of operations used by terrorists reveal well-established channels for cooperation and the exchange of information between terrorist groups; the cooperation includes providing refuge or safe passage, as well as financial and in-kind support. Effective counteraction requires a degree of bilateral and multilateral cooperation in all cases. In certain regions, the bilateral and multilateral cooperation is even more important either because of efforts to achieve economic and political integration, which makes movement across borders easy, or because of problems related to other forms of crime and the relative capacity of criminal justice systems.

62. Certain widely acceptable principles should always be kept in mind when designing measures against terrorism. Constitutional guarantees and respect for individual rights should be of primary concern. The unwavering commitment of Governments to protect the rights of their citizens is as important as the defences against victimization. Terrorists seek to attract publicity and support for their actions; therefore, developing public support should be central in government efforts against terrorism. The role of the media in this respect is critical. In addition to using reasonable self-restraint, the media should assist in educating the public and keeping it informed of the problem and of ways of solving it. Terrorist atrocities place terrorism in perspective.

63. Legislation is equally important. Terrorist activities should be made criminal offences for which severe penalties are prescribed, and appropriate publicity should be given to them so that the perpetrators will be fully prosecuted. Training law enforcement personnel or special units is essential, as is improving judicial response by affording members of the judiciary the independence and protection necessary for exercising their functions without fear of violence or other forms of intimidation.

64. National measures should include specialized training of personnel entrusted with the extremely sensitive tasks of negotiating with terrorists, especially in situations involving hostages. The knowledge and flexibility required to handling such situations should be emphasized in the basic training of law enforcement officials.

65. Efforts against terrorism must protect its victims. Initiatives in certain countries to include in their legislation specific provisions affording victims of terrorist acts special protection and additional compensation

could serve as useful models in other interested countries. The implementation of such measures would significantly increase public support.

66. In considering the activities of transnational criminal organizations, both the use of terror tactics and the links with terrorist and guerrilla organizations are recurring themes. Although transnational criminal organizations often resort to terror and develop alliances of convenience with terrorist organizations, the two kinds of organization have different objectives. Transnational criminal organizations engage in terror simply to provide a more congenial environment for their criminal enterprises. They are generally willing to work within the existing system as long as it can be manipulated. Insofar as they have political objectives, these are aimed against specific law enforcement policies rather than representing part of an effort to overthrow the existing power structure (much of which they may have already corrupted). Terrorist groups, in contrast, pursue political objectives often aimed at overthrowing the status quo at the national or international level. Insofar as terrorist groups engage in criminal activity such as drug or arms trafficking, this is usually designed to provide resources to enable them to pursue more effectively their political agendas. Although the means and ends of criminal and terrorist organizations may presently be different, there is a growing, and perhaps irreversible, trend towards convergence.

67. One element in the trend towards convergence is the direct use of terroristic tactics by transnational criminal organizations. Some transnational criminal organizations, such as the Italian Mafia and the Colombian cartels, have used terrorist attacks against the State and its representatives in an attempt to disrupt investigations, to deter the introduction or continuation of vigorous government policies, to eliminate effective law enforcement officials, to coerce judges into more lenient sentencing policies and to create an environment more conducive to criminal activity. A second element is the willingness of transnational criminal organizations to develop direct links with groups that engage in the widespread use of violence for political purposes. In some cases this may be unavoidable. The narcotic drug traffickers in Peru, for example, have had little choice but to deal with Sendero Luminoso (Shining Path) guerillas. And Shining Path guerrillas operating in the upper Huallaga valley have provided protection for the coca-bush growers and narcotic drug traffickers in return for a levy on narcotic drugs. For the traffickers, Shining Path involvement has made decisive government action much more difficult. For Shining Path, the levy has provided funding for its campaign to overthrow the Government. In effect, the linkage is a business relationship in which each side uses the other to achieve its respective goals.[23] Other examples of such symbiosis exist elsewhere. In Colombia, for example, the cartels and revolutionary movements such as the Revolutionary Armed Forces of Colombia (FARC) and M-19 have developed complex cooperative links in spite of a basic ideological antipathy.

68. Another factor leading towards convergence between international terrorism and transnational criminal activity is the changed political context. With the end of the cold war, international terrorism has lost much of the sponsorship it enjoyed in the past. State-sponsored terrorism still exists, but it has become far less important. As noted in a report by the Federal Bureau of Investigation,[24] state sponsors of terrorism are less anxious to be connected to terrorist acts, and more countries are attempting to avoid fitting the criteria for inclusion on the state sponsors of terrorism list. Yet this should not lead to complacency. As terrorist organizations find that government financial support is drying up, they are likely to turn to criminal organizations and activities as an alternative source of funds. In such circumstances, deals involving weapons for illicit products or services are likely to become more prevalent. Terrorist groups will almost certainly be increasingly willing to engage in criminal activities to fund political terrorism.

69. Another source of convergence is technological opportunity. The theft of nuclear material and its potential use for large-scale extortion and blackmail suggest that the distinction between crimes of extortion and political terrorism will become increasingly blurred. The theft of nuclear material by transnational criminal organizations and its purchase by terrorist organizations is one possibility. Another is that the groups that steal plutonium will themselves use it to blackmail Governments. In short, the motives of terrorist

groups and criminal organizations may differ, but the strategies they adopt to achieve their objectives could become indistinguishable if not inseparable. Moreover, the links between them will make both traditional law enforcement efforts and counter-terrorist strategies more difficult. The prospect is a formidable one on which Governments need to focus their attention.

C. Action against transnational crime

1. World Ministerial Conference on Organized Transnational Crime

70. United Nations activities aimed at countering transnational crime have been concentrated on encouraging States, both collectively and individually, to take measures against such crime. Given that rapid changes in technology and communications will continue to facilitate the commission of transnational crime, international cooperation and attention and the vigilance of individual States must increase correspondingly.

71. The World Ministerial Conference on Organized Transnational Crime held at Naples, Italy, from 21 to 23 November 1994, was organized by the Government of Italy and the International Scientific and Professional Advisory Committee, under the auspices of the Crime Prevention and Criminal Justice Branch, pursuant to Economic and Social Council resolutions 1993/29 and 1994/12. It represented a milestone in United Nations action in strengthening international cooperation against transnational crime. The World Ministerial Conference was attended by 142 States. The heads of State of Cyprus, Guinea-Bissau and Italy attended, as well as a number of deputy heads of State, prime ministers and deputy prime ministers. Most (86) of the delegations were led by a government minister. The number of participating States, as well as the level of representation, was higher than that for any other United Nations conference in the field of crime prevention and criminal justice. That fact reflected the importance attached by Governments to the issue, as well as their commitment and the timeliness of the event. Both developed and developing countries were well-represented. Non-governmental organizations and intergovernmental organizations also attended. There was extensive coverage of the World Ministerial Conference by the news media (1,050 accredited journalists were present), attesting to the fact that substantial public attention was focused on the event.

72. Most participants noted with alarm the rapid growth of transnational crime, in terms of extent, incidence and impact. A number of practical suggestions were put forward, including the development of a common concept of organized crime; the harmonization of legislation; the introduction of institutional reforms; the strengthening of cooperative arrangements such as joint task forces and information-sharing; the development of common strategies for investigation and prosecution; and the elaboration of new international instruments. The importance of fully utilizing the existing United Nations model treaties in crime prevention and criminal justice, especially the Model Treaty on Extradition (General Assembly resolution 45/116, annex) and the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex), was highlighted.

73. The Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, chap. I, subsect. A), unanimously adopted by the World Ministerial Conference, was approved by the General Assembly in its resolution 49/159. In that resolution, the Assembly urged States to implement the Political Declaration and Global Action Plan as a matter of urgency. The Assembly also urged all entities of the United Nations system, including the regional commissions and the specialized agencies, and the relevant intergovernmental and non-governmental organizations to extend to the United Nations crime prevention and criminal justice programme their full support in fulfilling its tasks. It invited Governments to contribute to the United Nations Crime Prevention and Criminal Justice Fund in order to enable the programme to respond to the most urgent needs of States in the field of the prevention of and control of organized transnational crime. It also requested the Secretary-General to transmit the Political Declaration and Global Action Plan to the Commission on Crime Prevention and Criminal Justice for appropriate action, while recommending a higher level of priority for the United Nations crime prevention

and criminal justice programme within the framework of the United Nations. The General Assembly resolved to take decisions at its fiftieth session on the allocation of further resources to the United Nations crime prevention and criminal justice programme on the basis of proposals for the modification of the programme to be submitted by the Secretary-General, taking into account the responsibilities entrusted to the United Nations pursuant to the Political Declaration and Global Action Plan.

74. In the Political Declaration, heads of State and Government, ministers responsible for criminal justice systems and other high-level representatives of Governments expressed, among other things, their resolve to protect their societies from organized crime in all its forms through strict and effective legislative measures and operational instruments. In addition, they expressed their determination to join forces and fight together against the expansion and diversification of organized transnational crime, directing particular efforts towards defeating the economic power of criminal organizations.

75. In the Political Declaration, the participants of the World Ministerial Conference strongly recommended that continued priority attention be accorded to strengthening international cooperation against organized transnational crime in the United Nations crime prevention and criminal justice programme, while acknowledging that limited resources placed constraints upon implementation of its mandates. They urged the Secretary-General to allocate adequate financial and human resources for the United Nations activities in the fight against organized transnational crime. They expressed their desire to strengthen and enhance, whenever possible, the capabilities of States, as well as of the United Nations, to achieve more effective international cooperation against the threats posed by organized transnational crime, particularly in relation to closer alignment of legislative texts concerning organized crime; strengthening international cooperation at the investigative, prosecutorial and judicial levels in operational matters; establishing modalities and basic principles for international cooperation at the regional and global levels; elaborating international agreements on organized transnational crime; and adopting measures and strategies to prevent and combat money-laundering and to control the use of the proceeds of crime.

76. In the Political Declaration, participants also stated that they would strive to improve financial and other assistance for programmes in developing countries and countries in transition and to mobilize funds from overall official development assistance and other official sources for programmes addressed to the fight against organized crime.

77. In the Global Action Plan, the participants identified measures to be implemented by States in order to counter organized transnational crime. The United Nations had an especially important role in facilitating, upon request, the provision of technical cooperation and assistance, in particular drafting legislation, providing specialized training for criminal justice officials, gathering, analysing and exchanging information, and as a forum for the exchange of experiences and expertise.

78. In the Global Action Plan, it was also stated that the United Nations should develop practical models of and practical guidelines for substantive and procedural legislation, based on the experience and expertise of States and drawing on contributions from relevant organizations. To prevent and control money-laundering and the proceeds of crime, the United Nations should assist States in needs assessment, treaty formulation and the development of criminal justice infrastructure and human resources. To reinforce common regulatory and enforcement strategies in that area, it should also join efforts with other international organizations and mechanisms, such as the Financial Action Task Force, established by the heads of State or Government of the Group of Seven major industrialized countries and the President of the Commission of the European Communities.

79. The World Ministerial Conference also adopted a resolution (A/49/748, annex, chap. I, sect. B) on setting up an international task force to elaborate proposals on the feasibility of establishing an international training centre for law enforcement and criminal justice personnel. The Government of Italy would organize

and host the task force, at no cost to the United Nations, drawing on the expertise of Member States and in consultation with the United Nations crime prevention and criminal justice programme. In the same resolution, the World Ministerial Conference invited the Government of Italy to submit the results of the task force's work to the Commission at its next session.

2. Other initiatives at the international level

80. The General Assembly, in its resolution 49/53, on the establishment of an international criminal court, noted that the International Law Commission at its forty-sixth session in 1994 had adopted a draft statute for an international criminal court. Also in that resolution, the Assembly decided to establish an ad hoc committee to review the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, in the light of that review, to consider arrangements for the convening of an international conference of plenipotentiaries. In accordance with the draft statute, an international criminal court would have jurisdiction, *inter alia*, over crimes pursuant to treaties, which are exceptionally serious crimes of international concern.

81. The General Assembly, in its resolution 49/60, approved the Declaration on Measures to Eliminate International Terrorism, contained in the annex to that resolution. In the Declaration, the Assembly declared that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes were in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial ethnic, religious or any other nature that might be invoked to justify them. States were urged to take effective and resolute measures for the speedy and final elimination of international terrorism. The Assembly also declared that, in order to combat effectively the increase in, and the growing international character and effects of, acts of terrorism, States should enhance their cooperation in that area. States that had not done so were urged to consider, as a matter of priority, becoming parties to the international conventions and protocols related to various aspects of international terrorism. In addition, States were encouraged to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism, with the aim of ensuring that there was a comprehensive legal framework covering all aspects of the matter. The Assembly also declared that the Secretary-General should assist in the implementation of the Declaration by taking practical measures to enhance international cooperation, including a review of existing possibilities within the United Nations system for assisting States in organizing workshops and training courses on combating crimes connected with international terrorism.

3. Future directions

82. At its fourth session, the Commission on Crime Prevention and Criminal Justice is expected to provide guidance on the implementation at all levels of the conclusions and recommendations of the World Ministerial Conference, based on the action taken by the General Assembly at its forty-ninth session. The Commission, at the same session, will initiate the process of requesting the views of Governments on the impact of a convention or conventions against organized transnational crime and on the issues that could be covered therein. Pursuant to General Assembly resolution 49/159, the Commission is expected to review regularly the progress made in the implementation of the Political Declaration and Global Action Plan. The Ninth Congress will present an opportunity to discuss what additional measures the international community may take to deal with the problem of transnational crime.

83. The Economic and Social Council, in section III of its resolution 1994/19, on preparations for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, invited the Ninth Congress to further develop measures for the prevention and control of new forms of national and transnational economic and organized crime, including the strengthening and possible creation of special departments within police agencies to deal with organized crime and the establishment of relationships

between such special departments through an international communications network. This issue is also central to the Global Action Plan according to which States should strengthen technical cooperation activities designed to assist developing countries and countries in transition, upon request, in enhancing the capability of their law enforcement and judicial systems.

III. ECONOMIC CRIME

A. Forms of economic crime

84. Economic crime is a term used to describe a variety of illicit activities. While fraud, in all its forms, is among its most common manifestations, economic crime includes large-scale theft, embezzlement, violations related to trading in securities and commodities, illicit activities that involve investment and financial institutions, and tax offences. The term is often deemed to include laundering of the proceeds of crime and corruption. Many experts refer to such activities as white-collar crime, business crime or commercial crime, approaching the issue from the point of view of the actors. The rationale behind that approach lies in the fact that the persons involved in such illicit activities differ from the persons responsible for other, more traditional forms of crime. The former often are respectable members of society or the business community, "in the good company of those we implicitly trust".[25] This is also related to the fact that they are often committed in the context or in the course of otherwise legitimate activities and do not usually involve direct physical violence.

85. Economic crime has generally received less attention at the national and international levels than other forms of crime. There are two reasons for that. First, many forms of economic crime are relatively invisible, compared with violent crime, for example. Even compared with other non-violent forms of crime, such as drug offences, the effects on society of economic crime are hidden. Public fear and concern are heightened in cases involving crime that affects personal security and the well-being of communities more directly. It is understandable, then, that the attention of members of the public, Governments and the international community has generally focused on the more manifest forms of criminal behaviour rather than on economic crime.

86. Secondly, economic crime in its modern forms presents an enormous challenge to law enforcement authorities. Increasingly, economic crimes involve the use of sophisticated technology, including computers or telecommunications devices (or both), to carry out unlawful commercial transactions, to disturb databases or computer systems or to orchestrate massive frauds. At the same time, such technology enables the perpetrators of such crime to obscure the means by which they have carried out their actions. New technologies create new opportunities for criminal conduct, which can be highly profitable and relatively low-risk. Combating such forms of economic crime requires significant expertise, resources and international cooperation.

87. Action at the international level is essential to combating economic crime. The more prevalent forms of economic crime and their scale are discussed below. Some forms of economic crime, such as bribery of government officials or tax evasion, are frequently carried out by or through corporations seeking enhanced profits or market advantages. Operating in the same manner as a corporation in such circumstances may contribute to obscuring the illegal activities and protecting the individuals acting within the corporation and, at the same time, may create special difficulties in deterring future unlawful acts. Thus, the basis of liability and the punishment of corporations and individuals within them are central to the successful enforcement of the law in this area.

88. A significant proportion of economic crime is carried out transnationally by organizations and, therefore, falls under transnational crime, which is discussed in the previous chaper. The action taken by the interna-

tional community in relation to transnational crime has focused on issues relevant to economic crime, including extradition and mutual legal assistance arrangements, provisions for the forfeiture of illegally acquired assets, and the adoption of appropriate taxation and bank secrecy laws. These measures are also discussed. Economic crime that does not fall into the category of transnational crime because it is carried out by individuals or corporations that are otherwise legitimate also deserves attention.

89. When discussing economic crime, there are a number of issues that require attention. The approach to this type of crime and mechanisms to prevent and control it should be designed keeping in mind its complexity and sophistication. It is important, for example, to consider that financial transactions, while being perfectly legitimate, are extremely complex and involve the financial systems of many countries. The complexity of the transactions and the speed with which they are carried out create a number of difficulties for regulators and government officials, particularly in developing countries and countries in transition, where relevant knowledge and expertise have not yet been accumulated. Financial markets, spurred by the possibilities offered by modern communications and electronic data processing, often operate in such a way that they create an impression of impropriety. Caution should always be exercised in regulating financial and economic activities and in elaborating legislative and other measures for the purpose of preventing and controlling economic crime. An appropriate balance needs to be struck; a regulatory and legislative system should be able to foster free competition and to encourage legitimate economic activity rather than stifle it through over-regulation. Such a system should, in sum, be designed to secure an environment in which illicit activity is difficult and involves a high risk, while legitimate economic activity is protected and allowed to flourish.

90. That should be the goal of effective mechanisms against economic crime. Economic crime does not have only short-term, fully quantifiable costs, such as the loss of public revenue or the value of the illicit activity *per se*; its long-term effects can be much more devastating. Economic crime undermines faith in major institutions of business and finance. It causes unemployment, artificially inflated prices, deteriorating standards; and, when coupled with the failure to inspect, to report and to account, it creates public anxiety and cynicism that are the bane of good governance. Economic crime puts a tremendous burden on the economy of a country, most of which is eventually borne by consumers and taxpayers, for example, according to one estimate, the collapse of the savings and loan institutions in the United States a few years ago cost as much as US$ 500 billion.[25] Effective prevention and control of economic crime are essential to the full realization of the capacity of an economy, as well as its growth and further development.

91. The forms of economic crime are too numerous to be described in detail in the present working paper. Some of the forms of greatest concern at present include large-scale fraud, counterfeiting, credit card fraud, computer crime, bribery and tax evasion. Often the direct victims of these activities are individuals and corporations, but their overall impact is broader. They can cause harm to the economic well-being of a State, a region or an industrial sector. They may deprive a State of an important source of tax revenue or diminish its attractiveness as a place of investment and, therefore, harm its economic position.

1. Large-scale fraud

92. Fraud committed through or involving banking and other financial institutions is a form of economic crime with grave consequences for the public at large, national economies and the international financial markets, which are more interdependent that ever before. Examples of large-scale fraud abound in the international press and the difficulty in analysing various cases for the purpose of providing the public with a more comprehensive picture of the events only partly reflects the obstacles encountered by regulators and law enforcement officials in collecting, processing, preserving and presenting the evidence required for the adjudication of such cases. The collapse of a large bank of credit and commerce in 1991 was considered to be one of the biggest scandals ever. In accordance with accounts in the international press, the executives of the bank were allegedly involved in a host of illicit activities, ranging from providing terrorists with

financial assistance to money-laundering and corruption. At the time of the collapse of the bank, it was estimated that a quarter of its US$ 20 billion in assets had been siphoned off; as a result, thousands of disillusioned investors and depositors in the 72 countries in which the bank had been operating scrambled to recover their investments.[26]

93. More recently, world financial markets were visibly shocked by the disclosure of the collapse of one of the leading British banking institutions. Through the actions of one of its employees, involved in unauthorized derivatives trading estimated at US$ 27 billion, the bank incurred losses amounting to US$ 900 million, more than its worth, and was closed down.[27]

94. Another manifestation of large-scale fraud involves funds of regional or international organizations and of development aid. For example, in a 1994 case still being investigated, the European Community was defrauded of roughly US$ 300 million through the diversion of 20,000 tonnes of beef that had been purchased under the terms of its common agricultural policy and had been replaced with inferior meat during processing.[28]

2. Counterfeiting

95. Counterfeiting is an extremely pervasive and costly form of economic crime. The production of paper currency has been facilitated by the increased availability of colour laser photocopiers and computer graphics software. States have been forced to take increasingly elaborate measures to protect the integrity of their currencies, such as the use of complex designs, special paper and holography. The problem goes far beyond the production of bogus currencies, however. Virtually every kind of manufactured product has been the target of counterfeiting activity: clothing, audio and video equipment, compact disks, watches, liquor, perfume, even parts for aeroplanes and motor vehicles. Losses are suffered by the manufacturers of the products, their employees, the economies of the States in which they are produced and the Governments that would otherwise have received tax revenues on the profits or sales generated by them.

3. Credit card fraud

96. Another major form of economic crime is credit card fraud. Losses caused by the use of fraudulent bank cards have been estimated at US$ 1.25 billion a year.[29] Again, technology has facilitated the manufacture of false cards. With every innovation introduced by financial institutions to provide security against counterfeiting and fraud, increasingly sophisticated means of profiting from those instruments have been devised. For example, when card issuers began including holograms on credit cards, counterfeiters had difficulties reproducing them. Now, however, good copies of holograms can be found on fake cards. The same is true for the encoded magnetic stripes on the cards. This device has also been compromised by technology allowing forgers to encode false information in the stripe. Legitimate manufacturers of cards are now turning to other security measures. Given the millions of cards in circulation at any one time, however, the new measures can only be introduced gradually; furthermore, once authorities in one part of the world take measures against fraudulent card users, the latter move their activities to other jurisdictions whose means of detecting counterfeit cards may be less sophisticated. Thus, problems associated with this form of economic crime take some years to eradicate and the losses caused by them are felt around the world. While there may be more economic activity in developed parts of the world and, therefore, opportunities to make profits from this form of economic crime may be greater than in other parts of the world, it is also true that security measures and means of detecting unlawful activity may be more advanced in developed areas. As such, the impact of this type of crime over the long term may actually be greater in emerging markets and developing countries than in developed countries.

4. Computer crime

97. Another important type of economic crime is crime committed by way of or in relation to computers. Not all computer crime, however, has an economic motive or impact. In some cases, it involves gaining access to or manipulating data for some other purpose, such as sabotage or terrorism. Many of the other forms of economic crime discussed in the present working paper rely in whole or in part on the use of computers. Thus, measures to deal with computer crime are particularly significant in that they involve combating many different kinds of economic crime at the same time.

98. In many cases, computer crime may be classified as economic crime. Computers are used to embezzle funds, to commit fraud by interfering with data or to obtain trade secrets or other confidential and economically valuable information. Other types of computer-related crime involve the reproduction and sale of protected computer programs, which is really another form of counterfeiting.*

99. To begin to deal with computer crime, States must modernize their substantive criminal laws to ensure that such misconduct as fraud by data manipulation, forgery of electronically stored information and theft or modification of, or obtaining unauthorized access or causing damage to, such information is prohibited. Some progress has been made towards harmonizing domestic laws in this area. In addition to domestic measures, international cooperation has been fostered in some regions of the world but much more needs to be done about the perpetrators of computer crime.

100. The Eighth Congress adopted a resolution entitled "Computer-related crimes", in which it called on Member States to intensify their efforts to combat more effectively such crimes, *inter alia*, by modernizing their national criminal laws and procedures, by taking measures, such as the improvement of computer security and privacy measures, sensitizing the public to the problem, and by elaborating rules of ethics in the use of computers.[30] In that resolution, the Eighth Congress recommended that the Committee on Crime Prevention and Control** should promote international efforts in the development of guidelines and standards to assist Member States in dealing with computer-related crimes. It also requested the Secretary-General to consider the publication of a technical publication on the prevention and prosecution of such crimes.

101. The pr paration of a technical publication or manual pursuant to the Eighth Congress resolution on computer-related crimes was initiated by the Government of Canada. The manual was first reviewed at an expert meeting convened in connection with the Colloquium on Computer Crime and Other Crimes against Information Technology. The Colloquium, held at Würzburg, Germany, from 5 to 8 October 1992, was organized by the International Association of Penal Law, a non-governmental organization in consultative status with the Economic and Social Council, with the joint participation of the United Nations, the Council of Europe and the European Union. The resulting "United Nations manual on the prevention and control of computer-related crime" was published in the *International Review of Criminal Policy* in 1994.[31]

102. The purpose of the manual is to assist in developing a common framework for understanding the implications of computer-related crime for the entire world. Accordingly, it provides advice to States on the nature of the problem, the possible inadequacies of current laws and the various solutions and action proposals that have been put forward throughout the world. The manual is a working document, a blueprint

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*For a detailed discussion of computer crime and international efforts to deal with it, see the *United Nations Manual on the Prevention and Control of Computer-Related Crime* in *International Review of Criminal Policy*, Nos. 43 and 44 (United Nations publication, Sales No. E.94.IV.5).

**Subsequently, the Economic and Social Council, in its resolution 1992/1, decided to dissolve the Committee on Crime Prevention and Control and to establish the Commission on Crime Prevention and Criminal Justice as a functional commission of the Council.

for action, which States faced with computer-related crime may use to increase their knowledge of the problem and the various solutions that have been recommended, in order to develop their own response and to foster international cooperation. The manual also identifies other sources of information to which States may turn for expertise on more specific issues.

103. The Organization for Economic Cooperation and Development (OECD)[32] and the Council of Europe[33] have each produced guidelines for policy makers and legislators on the subject of computer crime.

5. Bribery and corruption

104. Corporations, criminal associations or individuals may engage in bribery of officials for a number of reasons, not all of them economic. Still, in many cases, bribery is used to achieve an economic advantage. The goal is usually to persuade officials to extend to the payer some form of preferential treatment, such as awarding a contract, expediting a license, making exceptions to regulatory standards or turning a blind eye to violations of those standards.

105. In many jurisdictions, both the making and the receiving of a bribe is an offence. In relation to transnational transactions, however, this is often not sufficient to deter corrupt practices. First, the payer of the bribe is often in another jurisdiction, effectively beyond the reach of the law of the State in which the official is employed. Secondly, it may be extremely difficult to detect whether a payment was in fact made. Payment may have been made in the form of an electronic transfer or an in-kind arrangement, for example. Thirdly, even though the law may prohibit such conduct, the commercial culture prevailing in the State in which the official is employed may explicitly or implicitly encourage such practices.

106. Bribery can have serious economic and social costs in the affected jurisdiction. The cost of government contracts may increase since they may be awarded to payers of bribes rather than to the lowest bidder. Such practices amount to compromising market forces within the State, resulting in economic gain going to less productive companies, increased law enforcement costs and a loss of investor confidence or interest in a given country.

107. These effects may be differentially felt in States with emerging markets and developing economies. The temptation of officials to accede to offers of payment made by foreign business representatives may be greater in those States because of the comparative value of the payments and a heightened eagerness to encourage investment. Yet the long-term economic and social costs of corruption in States attempting to establish economies based in part on foreign capital investment are great. It may result in the diversion of development funds supplied by foreign States or international bodies, it may result in some corporations and Governments deciding not to make investments in the State in question, it may foster a climate in which individuals seek private gain over the well-being of the economy and it may result in failure to enforce regulatory standards necessary for the maintenance of health, safety and the environment and, ultimately, the viability of the economy as a whole.

108. To deal with the bribery of officials in relation to international transactions, States must respond with adequate domestic legislation, particularly in relation to payments made to foreign officials. One State that has taken action in this regard is the United States. The foreign corrupt practices act,[34] enacted in 1977 and amended in 1988, prohibits the bribing of foreign officials, whether directly or indirectly, in order to obtain a commercial advantage and requires public corporations in the United States to adopt proper accounting measures to track relevant payments.[35]

109. It should be noted that the Eighth Congress adopted a resolution entitled, "Corruption in government", in which it, *inter alia*, requested the Secretary-General to publish a manual on practical measures against corruption. The manual, developed with the invaluable assistance of the United States Department of Justice,

was published in 1993 in the *International Review of Criminal Policy*[36] under the title "Crime prevention and criminal justice in the context of development: realities and perspectives of international cooperation; practical measures against corruption". The issue of corruption is more extensively covered in the background paper on international action against corruption (A/CONF.169/14), prepared for the one-day plenary discussion on experiences in and practical measures aimed at combating corruption involving public officials, which has been included in the programme of work of the Ninth Congress pursuant to Economic and Social Council resolution 1993/32.

110. On 27 May 1994, the Council of OECD adopted a recommendation on bribery in international business transactions. It was recommended that OECD member States should take steps to combat bribery of foreign public officials in connection with international transactions by a variety of means, including criminal laws, tax legislation, company and business accounting requirements, and laws and regulations that make it possible for government procurement contracts to be denied as a sanction against such bribery. It also recommended that OECD member States should cooperate in investigations of such bribery by, for example, extraditing suspects. The International Symposium on Corruption and Good Governance, held in Paris from 13 to 14 March 1995, was organized by OECD. At the Symposium, the follow-up to the recommendation, the close cooperation of all international organizations with competence and mandates on the matter, and the possibility of assisting developing countries in strengthening their institutions and in preventing and controlling corruption and bribery were extensively discussed.

6. Tax evasion

111. Tax evasion can be an extremely serious form of economic crime, affecting the ability of States to generate sufficient revenue for adequate governance and, in some cases, thwarting the social purposes for which a tax has been imposed or for which its revenue has been targeted. It is becoming increasingly common, for example, for taxes to be employed in the achievement of an express social policy, such as to discourage consumption of harmful products, for example alcohol or tobacco, or the use of environmentally harmful products. Alternatively, tax measures may be used as a means for the State to generate revenue for particular expenditure, such as highways or other infrastructural requirements. As such, when taxes are evaded, not only does the State lose revenue that it requires, but it may also fail to achieve a desirable social aim.

112. In some cases, the measures taken by organizations to evade taxes, particularly commodity taxes, are extraordinarily elaborate and amount to transnational crime. For example, criminal organizations have executed schemes to evade United States fuel oil taxes involving corporations whose purpose was to assist in creating multiple wholesale transactions for fuel oil and creating a corresponding trail that would be impossible for United States tax enforcement officials to follow. It is estimated that the United States federal treasury lost at least US$ 1 billion in tax revenue and that several states in the United States lost roughly the same amount each by way of these schemes.[37]

7. Money-laundering

113. The illicit nature of the proceeds of the various activities carried out by criminal organizations needs to be concealed and thus "laundered", in order to provide these organizations with the necessary resources for financing other activities. This means that the funds of illicit origin are first employed in a series of sophisticated and transboundary financial transactions and then enter the legal circuit in various forms of investment. Money-laundering thus requires the exploitation of legitimate markets, banks and other financial intermediaries, and in certain cases there are dangerous interconnections between the management of financial intermediaries and criminal interests.

114. The laundering of the proceeds of crime, like other criminal activities, has acquired a global character. Organized criminal groups take advantage of weaknesses in national regulatory schemes, resort to flexible and rapid movement of assets across national boundaries, exploit the diversity of business regulations within and between national systems and benefit from the assistance of professional categories that are unregulated. Persons involved in money-laundering move their activities form one country to another or from one financial sector to another to avoid regulatory and control efforts. Therefore, it is essential that an effective and comprehensive global anti-money-laundering net be established.*

B. Dealing with economic crime

115. Economic crimes pose a great challenge to individual States and the international community. The forms of crime that are most harmful are often multi-jurisdictional, either in the sense that they involve transactions taking place in several jurisdictions and/or because the evasive behaviour of the perpetrators crosses international boundaries. The challenges, then, lie in creating the necessary legal, regulatory and investigatory authority to deal with such economic crime in individual States, staying abreast of the technologies that criminals may employ in the accomplishment of their object, exchanging information with other jurisdictions in relation to the crimes and cooperating with other States in investigating and bringing to justice the perpetrators.

116. As regards money-laundering, participants at the International Conference on Preventing and Controlling Money-Laundering and the Use of Proceeds of Crime: a Global Approach, held at Courmayeur, Italy, from 18 to 20 June 1994, stressed the need for filling the gaps in the anti-money-laundering net and building a social defence system with administrative and regulatory tools, to be buttressed by criminal law. In particular, it was necessary to make the laundering of drug and non-drug criminal proceeds a criminal offence, to limit bank secrecy, to apply the "know your customer" rule, to identify and report suspicious transactions, to establish improved regulations of business or professional conducting of financial operations, to increase asset forfeiture and to implement effective coordination at the regional and international levels for strategies and efforts to promote relevant action at the national level and cooperation between countries (E/CONF.88/7, paras. 13-23).

117. In the Naples Political Declaration (A/49/748, annex) the States participating in the World Ministerial Conference expressed their desire to strengthen and enhance the capability of States to achieve more effective international cooperation against transnational crime by measures to prevent and combat money-laundering and to control the use of the proceeds of crime. In addition, States were urged to develop instruments to deal with the broad range of organized transnational crimes extending beyond drug trafficking. In the Global Action Plan against Organized Transnational Crime, States participating in the World Ministerial Conference recommended that States should consider the need to make it a criminal offence to launder the proceeds of criminal activities, in order to address the accumulation by organized criminal groups of large amounts of capital.

118. These developments indicate the movement of the international community towards more broadly based measures for dealing with the proceeds of crime, including those in relational to transnational crime and economic crime in general.

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*For an overview of money-laundering and of ways to prevent it, see the International Scientific and Professional Advisory Council, General Reports of the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: a Global Approach, held at Courmayeur, Italy, from 18 to 20 June 1994; and the note by the Secretary-General on the report and recommendations of the International Conference (E/CONF.88/7).

119. One legal difficulty in this area that affects many States is corporate liability, given that many economic crimes are committed through use of the body corporate. This is particularly a problem in States that have not needed to develop theories of collective liability in the past because of the absence of market economies on the Western model. China, for example, had no corporate law until 1993. As such, organizations have rarely been prosecuted for unlawful conduct. It has been more common for individuals within corporations to be prosecuted and punished.[38]

120. While some States will have more developed laws and jurisprudence on corporate liability than others, it is a challenge for all States to devise an approach that will result in the ability to impose criminal liability on corporations in appropriate circumstances, as well as meaningful corporate sanctions. Some States, such as Australia and Canada, have recently given consideration to broadening the legal basis for corporate liability by recognizing a theory of liability based on "corporate culture" in an effort to impose liability on a basis appropriate to the nature of decision-making in and operations of modern corporations. The Eighth International Conference of the Society for the Reform of Criminal Law: The Corporation and the Criminal Law - Victim and Violator, held at Hong Kong from 4 to 8 December 1994, canvassed the various difficulties encountered by States in imposing liability on corporations and on individuals within them.

121. The Ninth Congress will provide an opportunity to discuss these legal issues, as well as ways of enhancing the international cooperation and information-sharing that is critical to dealing with the problem of serious economic crime. In the latter connection, the following matters merit discussion: the need for international cooperation in dealing with new forms of fraud; the need for international assistance in the training of investigators to detect these kinds of crime; the need to encourage police and industry partnerships to keep abreast of technological developments that may be employed in the commission of economic crime; and ways in which industry may take prevention measures, such as through voluntary codes and practices.

IV. THE ROLE OF CRIMINAL LAW IN THE PROTECTION OF THE ENVIRONMENT

A. International trends

122. The research and consultations conducted within the framework of the United Nations crime prevention and criminal justice programme* and the regional preparatory meetings for the Ninth Congress have highlighted a number of pressing concerns in regard to the role of the criminal law in the protection of the environment, including those discussed below.

1. Hazardous material and products

123. The report of the World Commission on Environment and Development, entitled "Our Common Future" (A/42/427, annex, part II, chap. 8, paras. 75-80) contains a detailed account of the environmental problems presented by the lucrative trade in hazardous waste. After that report was issued, in 1987, States took action to regulate hazardous waste landfills and to clean up contaminated sites. A by-product of that action, however, has been growth in the illicit disposal of hazardous wastes and the creation of international networks for trade in such wastes. In some countries, organized criminal groups have been associated with the illegal disposal of, and trade in, hazardous waste and materials.

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*See, for example, A. Alvazzi del Frate and Jennifer Norberry, eds., *Environmental Crime, Sanctioning Strategies and Sustainable Development* (United Nations publication, Sales No. E.93.III.N.4) and the background paper on environmental protection at the national and international levels: potentials and limits of criminal justice (A/CONF.169/12).

124. The illicit trade in hazardous waste continues to be a significant international and national problem. Of particular concern is growing evidence of the supply and shipment of dangerous substances such as radioactive by-products of the nuclear industry. Corrupt arrangements with officials may be used by criminal groups to facilitate the transportation of such materials and the avoidance of border and safety controls.

125. The ever-burgeoning international demand for and use of arms continues to wreak havoc upon citizens and the environment. The "collateral damage" produced by conflicts around the world has left vast areas of rich and fertile land unfit for use or habitation because of the spraying of toxic defoliants or the continuing deadly presence of land mines and other lethal munitions.

2. Flora and fauna

126. Another lucrative illicit trade activity that presents a severe environmental threat is trafficking in endangered plants and animal species. While the exact dimensions of this trade are unknown, recent estimates indicate it may amount to US$ 5 billion per year,[39] making it one of the largest contraband businesses in the world, after arms and illicit drugs. Many of the plants and animals are originally taken from their habitat by impoverished citizens of developing countries and are then transported by well-organized dealers to black markets in the developed world. The illicit trade in wildlife includes traffic in animal body parts. For example, the slaughter of elephants for their tusks and black rhinoceros for their horns has resulted in their ceasing to exist in many parts of Africa.

3. Illicit narcotic drugs

127. Cultivation of plants used to produce illicit narcotics drugs not only accounts for an increasing share of tropical deforestation, but also causes some of the most severe environmental damage. Growers often plant their crops in fragile forest environments in remote areas. Moreover, in some countries, the illicit cultivators are former city-dwellers who have moved into the cultivation regions to take advantage of the opportunity to make quick profits. Their rapid and systematic clearing and cultivation methods tend to be more devastating on the environment than those of traditional farmers, who often have a culturally instilled sense of respect for the land. Slash-and-burn techniques for land clearage are used for illicit cultivation, landing strips and buildings. The employment of petrol and diesel-fuelled machinery can accelerate rates of soil erosion in fragile mountain environments.[40]

128. Chemicals utilized at all stages of illicit drug cultivation and production have a negative impact on ecosystems. Growers often use high levels of fertilizers, herbicides and pesticides. Each year cocaine and heroin processors dump millions of tonnes of toxic chemical substances and waste by-products of the extraction process onto the land and into streams, and other bodies of water. Such substances include ethyl ether, acetone, ammonia, sulphuric acid and hydrochloric acid. Ecological experts have noted that many of the affected tributaries are almost devoid of many species of animal and plant life. Contaminated water used to irrigate food crops also poses a substantial public health hazard.[40]

129. The United Nations International Drug Control Programme takes this issue into account when preparing plans for alternative development of the traditional illicit cultivation areas. Furthermore, parties to the 1988 Convention are required to protect the environment when taking measures to prevent or eradicate illicit cultivation. While these measures set the stage for necessary action, other action is needed to stop environmental degradation caused by illicit drug cultivation and production.

4. Industrial accidents and activities

130. Environmental disasters such as those at Seveso, Bhopal, Chernobyl and Basel are reminders to the international community that the consequences of failed industrial processes reach beyond national borders.

Industrial accidents occur in plants all over the world. Over 1,000 accidents of varying degrees of severity occur each year.

131. While small businesses are important to most economies, they also produce pollution and other environmental damage, often as a result of negligent or reckless practices. For example, farmers use fertilizers and pesticides that can contaminate soil and water resources. Dry cleaners use solvents and chemicals that may be released into drainage and sewerage systems. Metalwork shops, body shops and paint shops may release toxic fumes or hazardous wastes. Cumulatively, the impact of these activities may be quite significant and may even extend beyond national borders.

B. Enforcement of criminal laws protecting the environment*

132. The public associates criminal law with public censure and punishment to such an extent that labelling an act as criminal can be an important way of influencing the activities of people and organizations, whether by way of deterrence, by emphasizing the blameworthiness and illegality of certain activities, or by recognizing the protection of the environment as a fundamental social value. Inclusion of environmental crimes in the penal code also plays an educative role, raising the awareness of the public that protection of the environment should not be taken lightly.

133. While it is generally recognized that criminal law should not be used indiscriminately to deal with a range of social harms of varying seriousness, its use may be justified to deal with truly culpable conduct that causes or threatens serious harm for which other treatment is inappropriate. Some activities so gravely harm the environment and affect the ecological balance that many States now regard them as crimes when they are deliberately perpetrated. And when entire communities are exposed to serious danger as a result of those crimes, they may be regarded as crimes against humanity.

134. By focusing on acts and omissions causing or likely to cause the most serious harm, the criminal justice system can at least reduce the danger of environmental damage resulting from illegal activities of powerful perpetrators. Furthermore, extremely harmful activities can be engaged in not only by large private and public enterprises, but also by myriads of individuals carrying out their daily activities. Those activities, collectively, can and often do lead to destruction or degradation of the environment, depletion or even extinction of living species, thus impairing the ability of both present and future generations to meet their essential needs.

135. Most illegal acts against the environment are committed unintentionally or unknowingly and, for that reason, do not deserve the same condemnation or stigma of moral delinquency as criminal acts committed deliberately, recklessly or through gross negligence. Minor infractions can usefully be dealt with through administrative penalties and sanctions, especially where no substantial damage has resulted from them. It is important, however, to deter such conduct since, in the aggregate, it can produce significant harm to the environment. In this respect, criminal law can serve as a useful backstop to administrative and civil law sanctions.

136. Since both penal code and environmental statutes aim at controlling or prohibiting illegal conduct, it is necessary to induce compliance by some means. Laws generally provide various tools and sanctions but, despite their availability, they are not often utilized. Weak laws and weak law enforcement are unlikely to command obedience. It is therefore essential to give teeth to those laws and to their enforcement by

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*Based on Crime Prevention and Criminal Justice Branch of the Secretariat and the United Nations Interregional Crime and Justice Research Institute, *Monograph on Capacity Building in Criminal Enforcement of Environmental Law*, forthcoming.

providing officials with a full range of sanctions and by employing an effective law enforcement strategy that fully responds to non-compliance.*

137. Difficulties grounded in the jurisprudence of some legal systems, especially the civil law system, pose particularly serious problems in dealing with organizational offenders through criminal law. Most large-scale industrial and commercial operations in a country are conducted through corporations or other legal entities. Their operations are capable of causing enormous environmental damage and human suffering. The directors and high managerial officials of such entities can often escape detection by hiding behind the independent legal status of the firms; even when these human agents are identified and prosecuted, their punishment often does not create sufficient incentive for the legal entities to comply unless they too are subject to prosecution and punishment. Therefore, legal systems should devise appropriate criminal law strategies that will force legal entities to comply.

138. The design and implementation of environmental laws pose significant problems for many countries, especially developing countries and countries in transition.[41] The most basic problems occur in the design of the legal regime, and severe constraints on implementation compound the design deficiencies. Multiplicity of laws and overlapping jurisdictions, lack of clearly assigned implementation authority, lack of political support for the stated objectives, inadequate resources and corruption in the public sector are some of the other problems that may be experienced by those countries. There may also be legal and economic problems in securing compliance with environmental laws by large industrial firms and public entities. Environmental issues may not be a high priority when countries are faced with grave social, economic and political problems. While industrial development may be needed for economic growth, if it is to be achieved by the reckless operation of factories, mines and other production facilities, there may ultimately be no real economic growth or real prosperity because of the loss of life, property or basic amenities, or the ecological imbalance that results.

139. Inadequate attention to customary law and practices also presents an impediment to law enforcement in many developing countries and countries in transition. People will not obey laws that fail to reflect their economic conditions, customs or values. For example, a law prohibiting the felling of trees (or the hunting of birds or the catching of fish etc.) is not likely to be obeyed where that is an age-old practice tied to local subsistence needs and alternative sources are not provided. Where possible, therefore, practical alternative means of local subsistence should be developed.

140. Even when laws are well drafted and jurisdictional mandates are clear, however, implementation problems may arise. For example, environmental agencies in some developing countries and countries in transition seldom have the technical capability or the political will to monitor compliance and to correct violations. Compounding those problems is the possibility that the public, enterprises and agencies subject to regulations and laws may not know of the applicable requirements or may consider them unjustified. The situation is exacerbated when environmental regulations target economically important activities, particularly activities conducted by the Government or powerful industrial establishments. Governments may fear that vigorous enforcement will curtail the flow of revenue. While weak enforcement is not limited to environmental laws, there is a great need to enforce environmental laws since disregarding such laws may cause permanent damage to the environment and human resources.

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*For examples of successful law enforcement responses to environmental crime see J. Epstein and T. Hammett, *Law Enforcement Response to Environmental Crime* (Washington, D.C., National Institute of Justice, United States Department of Justice, January 1995). For a description of strategies used by district attorneys in combating environmental crime, see J. Epstein and T. Hammett, *Local Prosecution of Environmental Crime* (Washington, D.C., National Institute of Justice, United States Department of Justice, June 1993).

141. Solutions to these problems cannot be found in law alone; at the same time, however, they cannot be handled in any effective, sustained fashion without law in the broader sense of the word: intelligent policy, rules, institutions, procedures and responsibilities. Above all, there must be the political will to move from policies and laws to the decision to implement them fully and to keep on implementing them. The international community can assist in strengthening national institutional capacities for designing, implementing and enforcing environmental policies, laws and regulations.

C. Directions for national and international action

1. National measures for the protection of the environment

142. The international community and individual States have not remained quiescent in the face of environmental threats. More than 900 international treaties and conventions have been concluded relating to environmental issues, most of which are subject specific, dealing only with certain aspects of polluting behaviour. There is still no comprehensive convention dealing with the environment as a whole. The acceptance by the vast majority of States of the principles and duties set out in existing treaties and conventions is an encouraging indication of the desire of the international community to protect the environment. Still, such measures are dependent on States ratifying them or enacting comparable domestic legislation. Experience has shown that the translation of international instruments into domestic law is a slow process and, even when it is carried out, there remain the issues of *locus standi*, law enforcement and the jurisdiction of the courts. The issue of *locus standi* (in this case, the right of appearance in a court of justice on a given question) involves deciding who should be permitted to initiate prosecutions for offences against the environment. While in many legal systems only the State may commence prosecutions, some jurisdictions also permit individuals and non-governmental organizations to exercise this power. A further problem arises when the State itself is responsible for polluting behaviour and is not, under international law, amenable to any criminal jurisdiction.

143. As noted above, compliance and enforcement problems can also be profound. For example, under the Convention on International Trade in Endangered Species of Wild Fauna and Flora,[42] trade in animals that are in imminent danger of extinction, such as sea turtles, giant pandas and cheetahs, is banned. Even with such international guarantees of protection, effective enforcement of such protection may still be difficult to achieve in practice, and this should be made a priority at the national level, as well as at the international level.

144. At the national level, further obstacles to the use of criminal law exist. While most jurisdictions possess comprehensive laws for the protection of land, air and water resources, few have created generic offences against the environment or consolidated their environmental legislation in a systematic way. In many jurisdictions, issues relating to the fault requirement applicable to environmental offences and the respective roles of civil and administrative penalties remain unresolved. The benefits of criminal law may be outweighed by the difficulties presented in meeting the burden of proof in criminal cases and the delay and cost of prosecutions.

145. The development and implementation of capacity-building programmes for the criminal enforcement of environmental law involve many actors: government and government institutions and their policy makers, decision makers, legal officers and drafters, agency inspectors and law enforcement officers; prosecutors and the judiciary; the private and public sector, whose activities are the subject of environmental regulation and law enforcement, including corporations and other legal entities, small businesses and individuals; the media; and non-governmental organizations. Success in achieving an acceptable level of compliance with environmental laws for sustainable development will largely depend on whether the interests, perspectives and rights of all these actors can be recognized and harmonized in a broad set of mutually acceptable objectives concerning the action to be taken.

146. The requirements for achieving environmental protection for sustainable development should depend on a careful assessment of the needs of the country involved, including its social and economic conditions, legal traditions and constitutional requirements. One practical first step might be to compile all relevant existing laws, including national, provincial and municipal provisions, which are often excessive in number, juxtaposed and contradictory. Those provisions can then be reviewed and consolidated and, where appropriate, reshaped into clear and consistent provisions, without prejudice to the regulatory powers delegated to provinces or other political subdivisions of the country, municipalities and local authorities.

2. International perspectives on environmental protection

147. Within the United Nations, significant advances have been made in providing for a global approach to the protection of the environment. Of particular significance are Agenda 21 and the Programme of Action of the International Conference on Population and Development (A/CONF.171/13, chap. I, resolution 1), which offer a framework for achieving a balance between sustainable development and the ultimate survival of the world's population. Still, at the international level, a number of key issues require immediate attention at the Ninth Congress.

148. Significant compliance problems remain to be resolved in regard to transboundary and transnational offences against the environment, whether dealt with under existing or prospective treaties.* Potentially, the detection, investigation and prosecution of such offences could become the responsibility of an international body established under the auspices of the United Nations. Even without such a body, however, much could be done to enhance the level of international compliance with environmental protection measures. Investigation and prosecution of offences could be facilitated through international technical cooperation arrangements, including the establishment of rosters of available experts,** the development of standard-setting manuals for practitioners and the regular exchange of experiences between practitioners.

149. Significant progress has been made by the International Law Commission in elaborating a draft Code of Crimes against the Peace and Security of Mankind which includes core offences against the environment and gives recognition to the principles enunciated by the United Nations Conference on Environment and Development in the Rio Declaration. The Economic and Social Council in its resolution 1994/15 took note of the recommendations concerning the role of the criminal law in the protection of the environment, made by the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, held in Vienna from 7 to 10 December 1993.

150. Valuable reforms may be achieved at the regional level, as was recognized by the above-mentioned Ad Hoc Expert Group and by the International Meeting of Experts on the Use of Criminal Sanctions in the Protection of the Environment, Internationally, Domestically and Regionally, held at Portland, Oregon (United States), from 19 to 23 March 1994. Agreement may be more easily reached at the regional level than at the interregional level, because of shared problems related to geographical proximity, as well as possible shared legal and political cultures. For example, the Council of Europe has prepared a draft convention on the protection of the environment through criminal law, and Canada, Mexico and the United States have concluded an agreement parallel to the North American Free Trade Agreement.

151. All United Nations entities have a role to play in the implementation of Agenda 21.[43] The United Nations Environment Programme, the United Nations Development Programme and the Commission for

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*For a discussion of transboundary pollution, see A/CONF.169/12, paras. 60-80.

**A roster of experts from all regions in the field of environmental crime is maintained by the Crime Prevention and Criminal Justice Branch pursuant to Economic and Social Council resolution 1993/28. At the time of writing, 188 experts from 49 countries were on the roster.

Sustainable Development have leading roles to play in this respect. Much can be done by the international community to facilitate change at the national level, including institutional capacity-building and coordination, training and providing advice and assistance in relation to law reform, public education and research.

152. There is little doubt that momentum is building for the introduction of new initiatives to protect the shrinking environmental resources upon which the world depends. The Ninth Congress provides an important opportunity to advance States' means to prevent, detect, investigate, prosecute and adjudicate offences against the environment. There should be a continuous review of the role of criminal law in protecting the environment, as national and international values continue to develop, and the needs and expectations of Member States change in this area. Ways should be found to improve the integration of criminal law into national and regional capacity-building packages in order to provide an important buttress to the enforcement of environmental laws and regulations, where necessary. To this end, further cooperation between the Crime Prevention and Criminal Justice Branch and other United Nations entities with responsibilities in this area is desirable. The United Nations crime prevention and criminal justice programme can do much to facilitate the implementation of initiatives advanced by the Ninth Congress and to assist at the international, regional and national levels with training, advisory services, research and evaluation programmes.

Notes

[1]See *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1-12 September 1975: report prepared by the Secretariat* (United Nations publication, Sales No. E.76.IV.2), para. 52.

[2]Ibid., paras. 51-52.

[3]See *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August-5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4), para. 158.

[4]Ibid., para. 159.

[5]See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. IV, sect. A, para. 66.

[6]Ibid., chap. I, sect. A.

[7]See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. IV, sect. C, paras. 249 and 265.

[8]Ibid., chap. I, sect. C.24, annex.

[9]*Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).

[10]See United Nations Environment Programme, *Convention on Biological Diversity* (Environmental Law and Institutions Programme Activity Centre), June 1992.

[11]*Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex I.

[12]Ibid., annex II.

[13]*Eighth United Nations Congress* ..., chap. I, sect. C.2.

[14]Josh Friedman, "Smugglers move 1 million yearly to industrial world", *Houston Chronicle*, 12 June 1994, p. A 31.

[15]R. T. Naylor, "Covert commerce and underground financing in the modern arms black market", paper presented to the Committee on International Security Studies of the American Academy of Arts and Sciences, 24 February 1994, p. 6.

[16]Testimony by Hans-Ludwig Zachert before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate, 25 May 1994.

[17]Ferdinand Protzman, "Germany reaffirms origin of seized plutonium in Russia", *New York Times*, 21 July 1994, p. A 6.

[18]See *Time*, No. 35, 29 August 1994; and *Newsweek*, 29 August 1994.

[19]John Krenuske, quoted in Marilyn Goldstein, "Human rights, if you're the right sex", *Newsday*, 13 December 1993, p. 8.

[20]Reuters, "Organ trafficking a reality, says Argentine diplomat", 22 November 1993.

[21]Quoted in "The organ theft scandal", *Times*, 18 November 1993; see also Reuters, "Film exposes black market in human body parts", 12 November 1993.

[22]M. E. Beekman and M. R. Daly, "Motor vehicle theft investigations: emerging international trends", *FBI Law Enforcement Bulletin*, vol. 69, No. 9 (September 1990), pp. 14-19.

[23]Gabriela Tarazona-Sevillano, *Sendero Luminoso and the Threat of Narcoterrorism* (New York, Praeger, 1990), p. 100.

[24]See United States of America, Department of Justice, Terrorist Research and Analytical Center, Counterterrorism Section, Intelligence Division, *Terrorism in the United States, 1982-1992* (Washington, D.C., 1993), p. 13.

[25]Richard L. Thornburgh, *American Criminal Law Review*, No. 28, 1991.

[26]See "BCCI roadblocks", *Newsweek*, 2 December 1991.

[27]See *International Herald Tribune*, 28 February 1995. At the time of writing this paper, three countries were involved in extradition proceedings. The outcome of the judicial proceedings to follow were not known.

[28]See *EuroBusiness*, February 1995.

[29]See M.E.P. Ballard, "A crisis in counterfeits", presented at the Eighth International Conference of the Society for the Reform of Criminal Law: The Corporation and the Criminal Law - Victim and Violator, Hong Kong, 4-8 December 1994.

[30]See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.9.

[31]*International Review of Criminal Policy*, Nos. 43 and 44 (United Nations publication, Sales No. E.94.IV.5).

[32]Organization for Economic Cooperation and Development, *Computer-Related Crime: Analysis of Legal Policy* (Paris, 1986); Organization for Economic Cooperation and Development, *Recommendation of the Council concerning Guidelines for the Security of Information Systems* (Paris, 1992).

[33]Council of Europe, *Computer-Related Crime: Recommendation No. R(89)9 on Computer-Related Crime and Final Report of the European Committee on Crime Problems* (Strasbourg, 1990).

[34]15 United States Code, § 78, ff.

[35]See J. C. Nobles Jr. and C. Maistrellis, "The foreign corrupt practices act: a systemic solution for the U.S. multinational", presented to the Eighth International Conference of the Society for the Reform of Criminal Law: The Corporation and the Criminal Law - Victim and Violator, Hong Kong, 4-8 December 1994.

[36]International Review of Criminal Policy, Nos. 41 and 42 (United Nations publication, Sales No.E.93.IV.4).

[37]See A. A. Block, "Petroleum rackets, racketeers, and the underground economy" presented to the Eighth International Conference of the Society for the Reform of Criminal Law: The Corporation and the Criminal Law - Victim and Violator, Hong Kong, 4-8 December 1994.

[38]See V. C. Yang, "Corporate liability: the state and the enterprise", paper presented to the Eighth International Conference of the Society for the Reform of Criminal Law: The Corporation and the Criminal Law - Victim and Violator, held at Hong Kong, 4-8 December 1994.

[39]Sarah Fitzgerald, *International Wildlife Trade: Whose Business Is It?* (Washington, D.C., World Wildlife Fund, 1989), p. 3.

[40]L. Armstead, "Illicit narcotics cultivation and processing: the ignored environmental drama", *Bulletin on Narcotics*, vol. XLIV, No. 2 (1992), pp. 10-11.

[41]See A. Alvazzi del Frate and J. Norberry, eds., "Rounding up: themes and issues", *Environmental Crime, Sanctioning Strategies and Sustainable Development* ....

[42]United Nations, *Treaty Series*, vol. 993, No. 14537.

[43]*Report of the United Nations Conference on Environment and Development* ..., annex II, para. 38.5.

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Item 5 of the provisional agenda*

CRIMINAL JUSTICE AND POLICE SYSTEMS: MANAGEMENT AND IMPROVEMENT OF POLICE AND OTHER LAW ENFORCEMENT AGENCIES, PROSECUTION, COURTS AND CORRECTIONS; AND THE ROLE OF LAWYERS

Working paper prepared by the Secretariat

Summary

In pursuance of Economic and Social Council resolutions 1993/32 and 1994/19, the present document reviews major developments in the management of criminal justice, including the privatization of crime control and other most recent legal and technological developments in justice systems that have an impact on policing, prosecution, courts, prisons and the role of legal defence. The document covers the questions of new forms of policing, changes in prosecutorial practices, complex criminal trials, and special groups of prisoners, as well as the use of non-custodial sanctions as one of the measures to assist in alleviating overcrowding. Finally, it reviews issues of international cooperation in criminal justice management and information technology.

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INTRODUCTION

A. Legislative background

1. On the recommendation of the Commission on Crime Prevention and Criminal Justice at its second session, the Economic and Social Council adopted resolution 1993/32, in which it approved the provisional agenda for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which included the substantive topic "Criminal justice and police systems: management and improvement of police and other law enforcement agencies, prosecution, courts and corrections; and the role of lawyers". Subsequently, the five regional preparatory meetings for the Ninth Congress considered in detail the four substantive items of the provisional agenda (items 3-6). On the recommendation of the Commission, the Council adopted resolution 1994/19, in section I of which it took note with appreciation of the reports of the regional preparatory meetings* and invited Member States and other entities involved, in their preparations for and their discussions at the Ninth Congress, to take into account the conclusions and recommendations contained in those reports. In sections II-V of that resolution, the Council made a number of recommendations on each of the substantive items of the provisional agenda. The present report reviews current developments concerning item 5 of the provisional agenda, entitled "Criminal justice and police systems: management and improvement of police and other law enforcement agencies, prosecution, courts and corrections; and the role of lawyers" (topic III).

B. Substantive background

2. The first half of the 1990s has been marked by serious political instability in many parts of the world, as well as widespread economic stringency and hardship. These phenomena have been associated in many countries with increased levels of reported crime, including organized crime, higher levels of public anxiety about crime, and demands for more punitive treatment of offenders. As a consequence, many countries are experiencing unprecedented levels of prison overcrowding as well as delays and congestion in the criminal justice process, including unacceptably high numbers of accused persons being held in pretrial detention. International and transnational crime is increasingly being recognized as a source of many problems, both within and between countries. There is concern in many quarters that the human rights of accused but unconvicted persons, as well as of convicted offenders, are not being fully respected, contrary to established international standards and norms on the humane and efficient processing of offenders.

3. At the same time, many positive developments may be seen in police and criminal justice systems in many countries. Those developments include new approaches to improving relations between the police and the community, new styles of organization of criminal justice agencies, improved planning and more comprehensive application of information technology, as well as further innovation in relation to alternatives to imprisonment. There have also been a number of controversial criminal justice developments, the most sensitive of which has probably been the privatization of some aspects of policing and corrections and the electronic surveillance of offenders. Higher levels of international cooperation in criminal justice management

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*See the report of the Asia and Pacific Regional Preparatory Meeting for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Bangkok from 17 to 21 January 1994 (A/CONF.169/RPM.1/Rev.1 and Corr.1), the report of the African Regional Preparatory Meeting for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Kampala from 14 to 18 February 1994 (A/CONF.169/RPM.2), the report of the European Regional Preparatory Meeting for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Vienna from 28 February to 4 March 1994 (A/CONF.169/RPM.3 and Corr.1), the Report of the Latin American and Caribbean Regional Preparatory Meeting for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at San José from 7 to 11 March 1994 (A/CONF.169/RPM.4), and the report of the Western Asia Regional Preparatory Meeting for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Amman from 20 to 24 March 1994 (A/CONF.169/RPM.5).

have also been seen in recent years; they represent a new dimension in criminal justice operations that has emerged in the wake of the growing transnationalization of crime.

I. CRIMINAL JUSTICE AND POLICE SYSTEMS

A. Traditional view of the criminal justice process

4. Much of the discussion on operations of the criminal justice system assumes that they involve three or four separate elements that are deliberately designed in such a way as to maintain the highest possible level of independence within each element. Whether a criminal justice system is seen as comprising three or four elements depends upon whether or not prosecution is counted as a separate and independent element. If it is, and that would seem to be the prevailing view, one that was emphasized at the regional preparatory meetings, then there are four elements: police, prosecution, courts and corrections. Individual cases are seen as passing from one element in the series to the next, thus justifying the term "criminal justice process". Outside this process, but within the preview of justice administration, there is still the role of lawyers; those who defend the perpetrators but also, at times, exercise on behalf of their clients other functions, including private prosecution.

5. Even though this model of the criminal justice process sees each element as independent, it is widely accepted that criminal justice systems should incorporate a number of checks and balances that are designed to ensure that the total system and its constituent elements operate according to the law and in the best interests of society at large.

6. At the same time, however, the reality of practical operations is that the balance of power within the criminal justice system is different in every country and that within each national criminal justice system, there are historical changes in the roles those agencies play or have played. This traditional view of criminal justice may have some attraction for criminal justice practitioners, as within broad limits it allows them considerable freedom to decide how to do their work, but it increasingly fails to recognize the realities of crime and justice and also makes it difficult to impose any concept of comprehensive management on the total system.

7. One of the realities of crime and justice not recognized by the traditional view of criminal justice is that the majority of incidents of unlawful behaviour are not reported to the police, as is shown by national criminal justice statistics, and at the international level, by the United Nations surveys of crime trends and operations of criminal justice systems. The reality of the criminal justice process in most countries is a picture of, at times, a massive attrition of cases from one stage to the next, to the extent that it might be claimed that the people who are processed through to the corrections end of the system are the unlucky symbols of how society would like to deal with its offenders. The offenders may serve the purpose of showing how the criminal justice system is designed to operate, but neither the performance of the system nor the way in which offenders are treated can be expected to make any significant impact on the level of crime in the community.

8. Another significant development changing the picture of criminal justice operations concerns cases involving transnational organized crime. Criminal justice systems are increasingly dealing with such difficult legal cases and actions, which are at times extraterritorial in nature, and the verdicts on them may have unprecedented international ramifications.

9. The traditional view of criminal justice is also unrealistic in that it fails to recognize that social control is maintained by many organizations and agencies other than those that constitute the formal system. For example, in most societies there are many times more law enforcement officials, or persons whose primary

task is the enforcement of the law, than there are members of the police service. Law enforcement officials include taxation officials, health inspectors, customs and excise officers, private security guards and agents, and many other occupational groups that have some responsibility for the enforcement of specific areas of the law. Furthermore, the courts are not the only agencies that determine guilt or innocence and impose penalties for wrongdoing. In most societies there are numerous tribunals, commissions and quasi-judicial bodies, such as those controlling lawyers and medical practitioners, which are more pervasive in their influence over human behaviour than are the criminal courts.

10. The most serious shortcoming of the traditional view of criminal justice systems, however, is the difficulty it causes for a management approach. If each of the elements maintains its traditional independence, an improvement in planning, coordination and efficiency is unlikely to be achieved as the impact of changes in one element on the others will not be fully recognized. At the Asia and Pacific Regional Preparatory Meeting for the Ninth Congress, it was pointed out that the inability of the agencies concerned to expedite the apprehension, prosecution and incarceration of the perpetrators of crime had contributed to an erosion of public confidence in the criminal justice system (A/CONF.169/RPM.1/Rev.1 and Corr.1, para. 49). An increase in police numbers may well be expected to increase the workload of prosecutors and the courts, while laws imposing harsher penalties may well be expected to increase the number of offenders undergoing one or other form of correctional supervision. Conversely, ineffective correctional programmes characterized by high numbers of escapes, prison disturbances and high recidivism would undoubtedly have an impact on the work of the police, prosecutors and the courts. If confidence and rationality is to prevail in criminal justice, an appropriate balance must be struck between the independence of the elements and overall planning and coordination.

B. Alternative approaches

1. Integrated criminal justice systems

11. In many parts of the world, Governments have experimented in recent years with alternative approaches to the traditional view of criminal justice, the most common of which have involved the establishment of coordinating or overreaching justice agencies. One manifestation of this approach has been to replace separate government departments controlling police, law and corrections with a single omnibus department of justice. One variation of this approach is to bring all of the relevant agencies other than the police into a single department, the exclusion of the police being justified on the grounds that they must not be seen to be closely controlled by the Government. But the closer meshing of criminal justice elements will inevitably be the subject of some criticism.[1] Another variation is the establishment of criminal justice commissions whose task it is to plan, coordinate and monitor the operation of the total system. Yet another variation is for Governments to establish committees or councils of ministers responsible for each criminal justice element. Under this arrangement, an attorney general, with responsibility for the courts and prosecution, a minister for police and a minister for corrections would be required to meet regularly, perhaps together with senior officers, to discuss developments and plans in their portfolios in order to ensure that a reasonable degree of coordination was being achieved. Whatever the new arrangement is, there is a need to evaluate it, to find out whether it has brought about the expected improvement. The Ninth Congress may wish to consider this point in discussing possible policy recommendations of interest to States that have not yet introduced such changes.

2. New styles of law enforcement

12. Police forces are always the largest single element in criminal justice systems, even though, as indicated above, they are by no means the only law enforcement agencies in any society. Because of the numerical dominance of law enforcement, however, any changes in the ways in which law enforcement agencies are organized and do their work are of great significance to the total criminal justice process, and there have been

many changes in different parts of the world. A notable trend in many countries has been to reduce the total number of law enforcement agencies by amalgamating police forces, for example, in order to reduce administrative costs, to improve the quality of recruitment and in-service training and to raise professional standards. Another trend in the opposite direction is to create specialist agencies, such as national crime authorities, with greater powers than traditional police forces. Similarly, in recent years there have been greater efforts to achieve regional and global cooperation, the International Criminal Police Organization (ICPO/Interpol), and the newly established Europol being examples. While it may be too early to take stock of those new developments, the Ninth Congress may wish to exchange preliminary observations on them in the context of shifting powers of particular law enforcement agencies, as well as in the context of cost reduction and overall improvement in criminal justice performance at the domestic and international levels.

13. Another major trend in policing that has created a great deal of interest in many parts of the world in recent years has been the establishment of closer links between the police and the communities that they serve. That development has taken a number of different forms and names but is most commonly known as community policing.* This term has been applied to any procedures or practices in policing aimed at reducing mistrust and antagonism between the police and the general public. Dividing police into small groups and assigning them to specific areas or locations is a favoured method of encouraging police officers and members of the public to get to know each other on a personal basis. It is assumed that with closer contact, the police will be less likely to be seen, as they are in some developing countries, as "the enemy", and therefore the public will be more likely to report suspicious matters to the police and will, in general, be more cooperative with them.

14. Other examples of police working more closely with the public include the establishment of neighbourhood watch committees, greater emphasis on policing beats on foot or by bicycle than on patrolling in cars, and generally encouraging in cities and suburbs the styles of policing that have been developed in villages and small towns. Furthermore, modern police officers are increasingly being seen as crime prevention advisers, perhaps working closely with community groups and committees, rather than as officials whose principal task is to catch lawbreakers after the event.

15. A further trend in policing that has emerged in the past two or three decades has been the various efforts to increase the professionalism of the police, as illustrated by the promulgation of codes of conduct, or ethical standards aimed at fostering a more reflective and sensitive culture in police organizations (see the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex), and the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (Economic and Social Council Resolution 1989/61, annex)). Some of the codes of conduct have been specifically directed at the highly controversial issue of the use of lethal force by the police (see the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials[2]). The trend towards higher professionalism has also been shown by a marked increase in educational standards for police officers in recent years. Some police forces even require all recruits to be university graduates with degrees in relevant disciplines such as law, psychology or forensic science.**

16. Another new development in modern policing that has provoked considerable interest is a procedure known as family group conferencing. This is a procedure whereby youthful offenders, with their extended families, meet with their victims and the victims' families under police supervision to resolve their differences

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*For a comparative and historical review of "community policing", see Robert R. Fieldmann, *Community Policing: Comparative Perspectives and Prospects* (New York, Harvester/Wheatsheaf, 1992) and Dlip K. Das, *Policing in Six Countries and the World: Organizational Perspectives* (Chicago, University of Illinois at Chicago, 1993).

**Some police forces have developed their own in-house research capacity, particularly with regard to projecting and monitoring crime trends and planning crime prevention; others rely on the assistance of external research institutes (A/CONF.169/RPM.5, para. 48).

and to reduce the probability of recidivism. Theoretically, the procedure is intended to facilitate the reintegration of the offender into the community through the shaming process that occurs in the conferences.[3] While it is too early for the full impact of that approach to be measured, early attempts at its evaluation have been uniformly encouraging.[4]

17. While closer police/community relations are invariably welcomed and seen as progressive, it is not always recognized that they tend to be associated with higher levels of reported crime. A police force that is trusted and respected will always be given more information by the public than one that is not seen in such a positive light. This illustrates the proposition that assessments of the efficiency of police forces should not be based on whether or not reported crime rates are rising or falling.

18. Of much greater relevance to the measurement of police efficiency is whether or not the police are meeting the expectations of the community that they serve, in terms of ensuring safety and reducing fear of crime. As was noted at the European Regional Preparatory Meeting for the Ninth Congress (A/CONF.169/RPM.3 and Corr.1, para. 95), violations of the human rights of the accused and the detained may result from the feeling of helplessness experienced by the police in combating organized crime, which is particularly sophisticated and most difficult to investigate. Thus, there remains the old dilemma of how to increase the effectiveness of law enforcement without infringing on the human rights of offenders.

19. There are a variety of situations in which the public is more or less sensitive to the violation of human rights by the police. Perhaps the police are most vulnerable to criticism and legal action at the community level when they are dealing with an alleged perpetrator who is a member of the community. Cases involving foreign perpetrators, including those that are handled by the police in deportation proceedings, are less likely to lead to the least criticism or legal action. Police feel that there is much less public scrutiny of their actions, although the law makes no such distinction. As was noted at the Western Asia Regional Preparatory Meeting for the Ninth Congress, violating human rights might appear to satisfy the immediate requirements of law enforcement, but it carries a medium- and long-term risk of creating an adversarial relationship between the police and the public (A/CONF.169/RPM.5, para. 51). Moreover, the international reputation of the police force will suffer if it discriminates against, for example, foreign perpetrators, who enjoy the least legal protection.

20. The Ninth Congress may wish to direct its attention to this dilemma and, in the light of national and international experiences, it may wish to review the question of effective policing. In particular, consideration could be given to the role and accountability of all agencies involved in handling alleged offenders, the independence of the complaint procedures, and the authorization and use of restraint equipment and methods. More attention should be given to the practical aspects of transferring foreign offenders, bearing in mind the legal instruments in that area, including the Model Treaty on Extradition (General Assembly resolution 45/116, annex), the Model Treaty on the Transfer of Proceedings in Criminal Matters (General Assembly resolution 45/118, annex), and the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (General Assembly resolution 45/119, annex).

C. Privatization option

1. Law enforcement

21. Attempts to provide the most economical and efficient law enforcement service have led many Governments to consider inviting private business to undertake a number of law enforcement tasks. This can be an extremely controversial and divisive issue, but there is growing evidence in many countries that not only can private security satisfactorily assume many policing functions previously thought to belong exclusively to public police forces, but it is increasingly doing so, with tacit if not explicit public approval.[5] It would seem that the privatization of law enforcement functions is occurring almost by stealth rather than

as a matter of public policy. It may be one of the reasons for the observation that public authority is gradually being eroded, a matter of great concern that has legal implications for both criminal justice officials and the public at large.*

22. Some of the specific police functions that have been transferred to the private security industry in some countries in recent years include transporting prisoners to and from courts, providing security during court hearings, and guarding embassies and government buildings, using either static posts or mobile patrols. There is also a trend in some countries towards police forces engaging private forensic scientists to assist in the investigation of serious crimes, rather than relying solely on the forensic services provided by government-funded laboratories.

23. Another trend involves contracting private agencies to provide complete police services to particular communities, such as retirement villages, holiday resorts and large business enterprises. In a similar development, police services are provided to indigenous communities, where members of the communities themselves are appointed or elected police officers or peace-keepers. All of these developments have aroused considerable interest, largely because of the questions that they raise about accountability, legality and ethics. But the high priority given in developed countries to achieving the optimum level of cost-effectiveness would seem to suggest that privatization of law enforcement may continue in the future. In developing countries, private policing is necessitated by the insufficient protection offered by official police; in those countries, it is an even more forceful symbol of the undermining of public authority than in developed countries.

2. Prosecution

24. In many societies, the prosecution of some persons accused of serious offences has always been undertaken by lawyers in private practice, while the prosecution of persons accused of less serious offences, heard in the lower courts, has been undertaken by public prosecutors or by the police. Private lawyers are generally engaged if the cases are particularly complex or controversial and when the public prosecution service has more work than it can handle. Thus, there has always been some degree of privatization in prosecution, but the question of whether all prosecutions should be handled by private lawyers will probably not be resolved to the satisfaction of all those concerned. In several countries, prosecutions are undertaken by qualified lawyers, either private or employed by the Government, rather than by the police, but in other countries, this might be seen as being not only prohibitively expensive but also contrary to a legal tradition that allows private prosecutors broad powers in performing their functions.

3. Courts

25. There is probably less scope for privatization in the criminal courts than there is in the other elements of the criminal justice system. Nevertheless, the development of alternative dispute resolution programmes, particularly for less serious offences, and of new techniques such as family group conferencing, described in paragraph 16 above, provide opportunities for private-sector involvement. The techniques of mediation, conciliation and arbitration, which have been well developed in the civil law environment, may well be more widely applicable in criminal law. For example, it is possible that some of the serious problems that complex and lengthy cases involving fraud and other white-collar crime pose for courts could by reduced, if not entirely eliminated, by applying principles developed in conciliation and arbitration hearings. In particular, if the accused is a corporation or business entity rather than an individual person, the fundamental aim of the

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*See the working paper submitted by Miguel Alfonso Martinez to the Subcommission on Prevention of Discrimination and Protection of Minorities, entitled "Study of the issue of the privatization of prisons" (E/CN.4/Sub.2/1991/56), and the outline prepared by Claire Pally pursuant to Subcommission decision 1992/107, entitled "The possible utility, scope and structure of a special study on the issue of privatization of prisons" (E/CN.4/Sub.2/1993/21).

court hearing must be not to impose punishment but to achieve an outcome that is in the interest of society as a whole and to reduce the probability of recidivism.

4. Corrections

26. The privatization of prisons, especially in developed countries, is being considered as a new response to an old problem. Public discussion has been heated and emotional, and the titles of some of the publications reveal the degree of *angst* felt by the commentators.[6]

27. The privatization of prisons has also been under study by the Subcommission on Prevention of Discrimination and Protection of Minorities and has evoked considerable interest (E/CN.4/Sub.2/1991/56 and E/CN.4/Sub.2/1993/21).

28. Some experts on the subject would not accept any degree of privatization in corrections. They see the application of criminal penalties as essentially the responsibility of Governments. Other experts however, draw a distinction between the allocation and the application of punishment. They cautiously accept some degree of privatization in the application of punishment, provided that the allocation or imposition is solely in the hands of the Government and that there is scrupulous monitoring of standards and rigorous evaluation of effectiveness, which still does not seem to be the case.[7] In the view of some Governments, the phrase "privatization of prisons" does not imply the surrender of authority by the public service but could be analysed as associated contracts with the public penitentiary service, corresponding to an experimental form of modernizing penal administration (E/CN.4/Sub.2/1993/21, para. 24).

29. There are many different levels or degrees at which privatization in corrections is currently being pursued. At the lowest level, it involves no more than correctional administrators or the officers in charge of individual prisons entering into contracts with private businesses for the supply of goods or services, such as construction material or security devices. Such contracts also involve the supply of food or clothing, or medical, dental and educational services. With arrangements such as these, the full control of prisons continues to lie with government authorities. At a higher level, privatization contracts are given, for example, for the provision of security at night, when all prisoners are in their cells or dormitories. This type of arrangement does not require the private operators to have any direct contact with prisoners, except in emergencies. In such cases, however, the question of the use of force and firearms, both in the light of domestic regulations and the United Nations standards and norms in criminal justice, would need to be thoroughly reviewed.

30. At an even higher level, private contractors are engaged to take total responsibility for the management of prisons that were designed and constructed by government authorities. This arrangement is what is normally understood to be privatization in corrections. It is necessary under this type of arrangement for the contract to include a great deal of detail about the treatment of prisoners in order to ensure that health standards are maintained and that human rights are respected. The contract must also specify the monitoring arrangements to be used and the appropriate responses to emergencies such as escapes, riots or deaths. These conditions also apply to the highest level of privatization in which the private operator is contracted to design, construct, manage and finance a prison under the supervision of government authorities. These requirements may exceed those in state-run prisons. In this connection, a central question in the debate about privatization in corrections is whether or not privatized prisons are less expensive or better than those operated by the Government. This question seems simple at first glance but becomes increasingly difficult when considering the apportionment of the cost of central administration and emergency services. To date insufficient independent research has been undertaken to answer this question conclusively. Similarly, it has not been established that inmates in privatized prisons have higher or lower rates of recidivism, nor has it been possible to establish that prisoners from any other prisons have higher or lower rates of recidivism. Finally, there is

no impartial evidence that private entrepreneurs have vested financial interest in keeping the prisoners under lock and key, as earlier release (parole) would deprive such entrepreneurs of their profits.

31. In a few years, if privatization still continues, there may be further changes in the scope of public authority in justice administration and more evidence on which to draw informed conclusions. The review by the Ninth Congress of the processes underlying those changes may throw more light on the privatization issue and enable its pros and cons to be assessed. In particular, the Ninth Congress may wish to consider possible controversies in criminal policies: first, the diminishing responsibility of the State for people who, under its authority, are deprived of their liberty but serve their sentences in privately run institutions; and secondly, possible changes in sentencing policies as a result of privatization and if, despite these possible changes, the State is in a position to continue to exercise overall management in operating correctional institutions.

II. PROSECUTION

A. Independence and accountability

32. A widely debated and perhaps ultimately insoluble issue in relation to the prosecution stage of the criminal justice process is to whom should prosecutors be answerable. Should they have the independence of judges of superior courts or should their decision-making be reviewed by a separate authority, perhaps the minister responsible for the operation of the courts? The sensitivity of these questions is indicated, for example, in the brief and tentative reference to the role of prosecutors in the report of the Western Asia Regional Preparatory Meeting for the Ninth Congress (A/CONF.169/RPM.5, para. 54): "With regard to the role and functions of prosecutors, it was felt by some participants that such persons should enjoy a certain degree of authority and immunity. In particular, they should be vested with the power to refrain from prosecution for legal or substantive reasons, subject to judicial review." This statement draws attention to a number of the difficulties that are evident in relation to the independence and accountability of prosecutors (see the Guidelines on the Role of Prosecutors[8]).

33. The role of a prosecutor is essentially to determine if an offence has been committed (on the basis of information supplied by law enforcement authorities), to decide what charge or charges should be laid, against whom, and to decide whether or not there is sufficient credible evidence to prosecute the matter in court. These are challenging questions, but the work of prosecutors becomes even more challenging if the person who may be charged is a prominent public figure, such as a politician, or if there is widespread public emotion expressed about the offence. In some jurisdictions the work of the prosecutor is further complicated by the practice known as plea bargaining,[9] whether formally recognized or not. In other systems, the authority of prosecutors seems to be greater than that of judges as the courts acquit a small proportion of the cases that are brought before them. In most countries, however, the courts exercise a form of indirect control over prosecutors by dismissing cases that are judged unproved or improper. That form of control or accountability does not routinely cover cases where the prosecutor decides to refrain from prosecution, and it is on this issue that some form of oversight has been suggested. One possibility would be for highly controversial cases to be considered by a panel of independent prosecutors, perhaps chaired by a retired judge of a superior court. National laws and practices must have developed some solutions that could be shared and discussed at the Ninth Congress.

34. In all countries, regardless of their legal traditions, growing attention is being paid to the fact that, like the police, prosecutors are faced with case-loads that they cannot handle in a timely fashion.[10] Unlike the police, however, which adapt more dynamically to changing demands, the prosecution service does not seem to benefit as much from improvements in criminal justice management, let alone from the computerization of information and its system-wide processing. Thus, the prosecution contributes to an old saying that

"justice delayed is justice denied" and to the dissatisfaction of the public with criminal justice administration. It is, important therefore, for the Ninth Congress to consider examples of ways to overcome the problem of prosecutors not being able to deal with cases in a timely fashion.

B. Presenting the views of victims

35. One positive development in justice administration is the presentation of the views of victims by prosecutors. A major development of the past one or two decades has been the growth of the victim support movement in many parts of the world. The movement has been largely motivated by the need to ensure that both the emotional and the financial needs of victims are met. Another driving force of the movement, however, has been the need to ensure that victims are treated with respect and dignity by the courts, and the recognition that the attention and resources given to offenders often tend to exceed those given to victims. In many countries, the movement has become an effective lobby, putting pressure on Governments to enact legislation that provides adequate compensation for victims of crime and that sometimes provides for the lawful presentation to the courts of documents known as victim impact statements. Such statements, which are prepared by a psychologist or social worker, are intended to bring to the attention of the court the reality of the suffering or harm experienced by the victim. It is generally the prosecutor who is responsible for presenting victim impact statements to the court.

36. Theoretically, this additional role for prosecutors could create difficulties for them, as the primary task of the prosecutor is to represent the State or the entire community and not the needs of an individual victim. Furthermore, in most legal systems the sentence or penalty to be imposed on the offender is determined by the objective facts of the case rather than the subjective reactions of the victim. Nevertheless, when prosecutors have been required to accept this additional responsibility they have generally done so in a professional and appropriate manner, and there is no doubt that victims feel more satisfied with court proceedings if their point of view has been heard. The Ninth Congress may wish to exchange views and experiences on this modern trend in prosecutional practice, which should be made more common in domestic legislation.

C. Prosecuting political and commercial figures

37. As indicated in paragraph 33 above, prosecutors may face particular difficulties if the alleged offenders to be prosecuted are powerful political figures; for example, a minister in a Government in office, or persons of significant business or commercial authority. In the case of the latter, the alleged offender may not be an individual but a company with a budget as large as or larger than that of the State in which the charges are to be laid. In such cases, the assistance and support of experienced prosecutors from larger jurisdictions would clearly be appreciated, but the central challenge remains. It is imperative in such cases to ensure that the impression is not created that some people or agencies are so powerful that they are immune from prosecution, conviction or punishment. The integrity of the total system hinges on prosecutors not flinching from their duty in such cases. It is essential, therefore, that Governments give appropriate moral support to prosecutors without in any way reducing their capacity to make decisions independently of political considerations.

38. This is a sensitive issue in every country, but positive experiences in this area could be shared at the Ninth Congress. Such experiences might centre on practical steps for dealing with the prosecution of prominent figures with a view to ensuring the accountability and transparency of criminal proceedings. It may be recalled that the Ninth Congress will have before it for its consideration a draft international code of conduct for public officials (A/CONF.169/PM.1/Add.1, annex II), which might be helpful in monitoring the extension of accountability and transparency, to all criminal justice officials, including police officers, judges and prison officials.

III. COURTS

A. Judicial independence

39. The question of how independent and how accountable judges and magistrates should be is similar to that discussed in relation to prosecutors in paragraphs 32-34 above, but there is less likely to be any opposition to the notion of complete judicial independence with absolute guarantees of freedom from political interference. That notion is at the core of the Basic Principles on the Independence of the Judiciary,[11] adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and welcomed by the General Assembly in its resolution 40/146. Regardless of whether judges are appointed or elected, there is little disagreement with the notion of complete judicial independence, but there is much room for debate about how such appointments should be made.[12] There is also increasing discussion about the extent to which it is appropriate for the judiciary to reflect the composition of the community in terms of gender, race and social class.

40. With regard to judicial accountability, it is generally believed that the hierarchy of the courts, together with an appeal procedure in which judicial decisions may be reviewed by the next level of the courts, ensures an adequate level of accountability. Also the law itself, which is interpreted and applied by the judiciary, is derived from the legislature, which may amend the law as it wishes. Thus, members of the judiciary are accountable to both the law and their senior colleagues, and the legislature, theoretically expressing the will of the people, is paramount. The Ninth Congress may wish to examine this increasing important global standard and discuss practical ways in which judicial independence contributes to the more humane and efficient treatment of offenders and victims.

B. Mediation and conciliation

41. The courts are traditionally seen as the centre-piece of the criminal justice system, and are generally characterized by high status and authority and freedom from political interference. That image has not changed, but there have been a number of developments in recent years that have resulted in the judicial systems in many countries adapting to meet new demands and pressures. One of those developments has been the diversion away from the courts of many relatively routine cases, resulting in formal court hearings being reserved for the more serious and complex cases.

42. One such diversionary scheme is family group conferencing conducted by the police for juvenile offenders and their victims, described in paragraph 16 above. There are many other similar schemes with similar objectives. The term "alternative dispute resolution" has been coined to describe non-judicial procedures aimed at settling criminal or civil matters without requiring the parties concerned to appear in court. In contrast to court hearings, such procedures are generally informal and inexpensive and do not involve undue delays. For these reasons, alternative dispute resolution is more attractive to the parties involved than an appearance in the courts.

43. Some, but not all, of the alternative procedures involve mediation and conciliation between disputing parties, including offenders and their victims. In such situations, a trained counsellor endeavours to guide the disputing parties to a resolution, sometimes drafting contracts that specify the appropriate reparation or restitution to be made. The reparation or restitution may be in the form of money or services to be performed. The evaluation of the results of programmes in which offenders and victims meet each other has been generally favourable compared with those of traditional court hearings.[13]

44. Mediation and conciliation procedures have also been used in commercial disputes involving large amounts of money. Especially in cases where the disputing parties are located in different parts of the world,

it has been found to be both expedient and less costly to use alternative dispute resolution procedures rather than seeking resolution through the courts.

45. There are also numerous other alternatives to custody, ranging from fines to attendance in education or therapy programmes and, most significantly, to community service programmes. Measures that should be used are listed in the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (General Assembly resolution 45/110, annex).[14]

C. Complex criminal trials

46. There are a number of different types of criminal trials that can cause problems for the courts because of the complexity of the issues and information to be presented. The first of these are commercial trials, or trials of persons accused of white-collar or corporate crimes. The main problem with trials of this type is the enormous volume of information that is to be admitted as evidence. If the defending lawyers in such cases are determined to dispute every piece of evidence, trials of this type can take several months before they are concluded. Furthermore, if a jury is involved, it is highly unlikely that the average jury member will be able to understand all of the information and, therefore, jury members might be more inclined to vote for an acquittal. Even an experienced judge may have difficulty in mastering all of the information presented in this type of case. Quite frequently such cases are even more complicated because the central charges relate to conspiracy involving all persons accused in the case rather than direct criminality.

47. There are two approaches that may be pursued to make this type of case more manageable. The first is for the judge to insist before the trial on the highest possible level of discovery (or disclosure) of facts not in dispute in order to reduce the number of issues to be formally settled in the court. The second is to devise a means of simplifying the actual presentation in court. Some pioneering work has been done in that area with videotaped evidence, including video images of signatures, cheques and other documents, together with carefully composed charts indicating the flow of money or the relationship between companies or individuals.

48. The Ninth Congress may wish to hear the experiences of countries that have done pioneering work in this area, including the effects those experiences have had on speeding up criminal proceedings, reducing expenditure and arriving at the objective truth in the court's verdict.

49. A further type of criminal trial that may cause some problems for the courts is that in which a number of accused persons are charged with terrorist offences. In many of these cases, there are political overtones, but the practical difficulties arise mainly from the need to maintain security. In extreme cases, it may be necessary for the trial to be conducted in a prison, especially if it is considered too dangerous to transport the accused persons through public streets, but such a solution is likely to result in allegations of secrecy and denial of public justice. A further complication may arise in such cases when one (or more) of the accused persons is willing to give evidence against the others and therefore must be held separately from them. A partial, but by no means complete, solution to those problems may be found in the improved design of courtrooms and in their proximity to pretrial detention facilities, but in times of political crisis it is sometimes also necessary to depart from normal procedures.[15]

50. Compared with the period before the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in 1990, the changing crime scene in many countries presents courts with more complex cases and demands that cannot be handled through alternative resolution techniques or through the negotiation of controversial lenient measures, as in cases involving white-collar offences.

51. Cases involving corporate deviance and organized crime may differ as far as their perpetrators are concerned, but not in their complexity. Therefore, the courts face enormous difficulties in processing such cases, especially when sophisticated financial transactions and foreign defendants are involved. It could be

argued that court action reflects the limited capability of national criminal justice systems to bring to trial offenders who are outside their jurisdictions and whose assets are relatively secure abroad.

52. Finally, spectacular court judgements authorizing national law enforcement authorities to act in other countries underline how determined some Governments are to tackle the problem of transnational organized crime.[16] At the same time, however, they show how inadequate existing international judicial assistance is and how vulnerable to criticism any decisive action is that goes beyond the narrow established limits.

53. Because such issues create unprecedented difficulties in administering justice, the Ninth Congress may wish to consider exchanging views on the best ways and means of dealing with them.

D. Pretrial detention

54. In many countries, the court systems must accept responsibility for the fact that there has been a significant increase in the numbers of persons held in custody while awaiting trial. This is a matter of concern as research in some parts of the world has shown that the majority of the accused persons who are remanded in custody are not sentenced to imprisonment as they are either released on bail at a later time, are acquitted or receive a non-custodial penalty.[17] Concern over this situation is increased by the fact that in some countries the conditions in remand centres or pretrial detention facilities are less congenial than they are in prisons occupied by convicted offenders.* This concern has led the Secretariat to publish practical guidelines on administering detention in a handbook of international standards relating to pretrial detention.[18]

55. From the managerial perspective, increasing numbers of pretrial detainees should be dealt with by the courts using two separate strategies. First, the courts should exercise their authority and release more accused persons on bail rather than remanding them in custody; and secondly, the courts should attempt to reduce the period of pretrial detention by increasing their efficiency. The first strategy has been the part of broad policies related to the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). The second strategy may require more courts and judges, but that is preferable to taking no action at all.

IV. CORRECTIONS

A. Overcrowding

56. At the regional preparatory meetings and subsequently at the third session of the Commission on Crime Prevention and Criminal Justice, the view was often expressed that the most persistent of all problems in justice administration involved corrections. That view is supported by the periodical surveys on the implementation of the Standard Minimum Rules for the Treatment of Prisoners.** Under the question of corrections, two major, frequently interrelated, problems still remain: excessive prison populations and overcrowding. As the results of the United Nations survey of crime trends and criminal justice operations show, both in developed and developing countries, there are high prison rates (A/CONF.169/15). Whereas in developed countries, the high prison rate may be an intended outcome of criminal policy and may, in some cases, be associated with a commensurate investment in building new prisons, in many other countries, both developed and developing, that may not be the case.

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*For a global review, see Human Rights Watch, *The Human Rights Watch Global Report on Prisons* (New York, 1993).

**Inquiries on the implementation of the Standard Minimum Rules for the Treatment of Prisoners were addressed to Governments by the Secretary-General in 1967, 1974, 1980 and 1984 (A/CONF.43/3, annex; A/CONF.56/6, annex I; A/CONF.87/11/Add.1; A/CONF.121/15; and A/CONF.144/11). The sixth survey is currently under way. Its results will be presented to the Commission on Crime Prevention and Criminal Justice at its fifth session, in 1996.

57. The seriousness of the situation is graphically portrayed in the report of the Latin American and Caribbean regional preparatory meeting, in which it is stated that in some countries in the region the number of untried inmates was excessively high (A/CONF.169/RPM.4, para. 57) and that, in many countries in the region, prisons were human hells marked by overcrowding, idleness, drugs, rape, murder and administrative corruption (A/CONF.169/RPM.4, para. 59). Those were probably two of the most forthright statements about criminal justice to be reported recently at a United Nations regional preparatory meeting; however, no less dramatic accounts of the prison situation have been presented by non-governmental organizations, in particular, Amnesty International, Minnesota Advocates for Human Rights and Human Rights Watch. It is, therefore, quite disturbing to observe that human rights assistance in directly improving prison conditions is currently rather scarce, as if investing new funds in that area were contrary to the goal of reforming the criminal justice system in democratic societies.

58. In almost any country, but particularly in countries in Africa, Asia and Latin America, there are prison structures requiring fundamental renovation and expansion, and there are imprisonment policies that continue to send offenders to prisons in spite of the inhumane conditions in those prisons and in spite of the existence of alternatives to imprisonment in general. Bearing in mind the overcrowded conditions of prisons throughout the world, the Ninth Congress may wish to examine the underlying causes of the persistence of traditional sentencing policies in some countries despite the fact that new policies on alternatives to imprisonment have met with success in other countries. Concrete situations that have led such new policies to become well entrenched in, for instance, Scandinavian countries may serve as good examples to be followed by managers and policy makers in other countries, taking due account of their different conditions, as well as the overriding humanitarian objectives of the United Nations crime prevention and criminal justice programme.

B. Minority groups in prison

59. In recent years, there has been increasing interest in and concern about the treatment of minority groups in prisons. In many countries in different parts of the world, attention has focused on indigenous people, who are frequently overrepresented in prisons and are not always provided with programmes and activities that are appropriate to their culture. In contrast, women are always underrepresented in prison and, because of their small numbers, may not always be offered participation in the full range of programmes that are available to men in the same prison system. Also, women prisoners in some countries have claimed that their particular health needs are not being met and that adequate provision has not been made for their role as mothers.

60. The situation of foreign prisoners is similar to that of members of small religious groups who are in prison, perhaps for reasons of conscience.[19] In addition, consideration should be given to pretrial detainees or unconvicted prisoners who may not be considered members of a minority group as in some countries they comprise well over half of the total prison population.

61. Another matter of particular concern is the presence of children and young people in prisons designed for adult offenders. This situation occurs in a number of countries where attempts to build institutions for juvenile offenders have been unsuccessful, as was mentioned in the report of the African regional preparatory meeting (A/CONF.169/RPM.2, para. 69). Even though the worldwide trend is towards deinstitutionalizing juvenile justice, in most countries and jurisdictions there is a need for a small number of juveniles to be held in secure care and it is essential that that group should be kept in facilities designed for that purpose.

62. At the other end of the age scale, an emerging problem for correctional administrators is the increasing frail and elderly segment of the prison population. This phenomenon has been noticed in a number of countries and seems to be a direct result of legislation or sentencing guidelines that allow judges little or no discretion in finding alternative ways of dealing with elderly offenders. Also, recent restrictions on the use of parole and early release programmes have resulted in such prisoners not being discharged from prison as

readily as might have been the case in the past. Many of the common assumptions about how prisons should be run are found to be inappropriate when applied to prisoners who might otherwise reside in homes for the elderly.

C. Health issues

63. According to a study on international prison health care conducted in 1993 by the Alliance of Non-governmental Organizations in Crime Prevention and Criminal Justice,[20] medications were readily available in 37 of the 47 prison systems on which information was provided. Medications were ordered by doctors or medical officers in a majority of the systems. Fourteen prison systems had prison pharmacies. The remaining systems relied on local hospitals or community pharmacies or on relatives to supply the medications needed. Basic health and nutrition were significant problems in eight countries and 15 prison systems. In a majority of the prison systems, a general assessment, including medical and psychiatric screening, was administered to prisoners upon their arrival. In 17 of the prison systems, prisoners with communicable diseases were treated in prison hospitals, in outside hospitals in 2 of the prison systems, and in 25 of the prison systems both prison hospitals and community hospitals were available to such prisoners. The physicians employed in most prison systems worked for either the prison system or the local health department. Likewise, nurses or other health-care workers were employed by the same offices and were available in most systems. Health-care training was offered only to the professional staff in 16 of the prison systems, to officers in 20 of the prison systems and to prisoners in 7 of the prison systems. No health-care training was given in 10 of the prison systems and none of the systems studied offered health-care training for family members. Prisoners exhibiting signs of mental illness were treated in prison in 24 of the prison systems; community facilities were available to such prisoners in nine of the prison systems; and in seven of the prison systems, both in-house and community facilities were available to such prisoners. The health-care standards varied among the prison systems. Most followed the standards set for their communities; however, in many of the prison systems studied, the health-care standards were in need of improvement. In all of the prison systems examined in the study, families of ill prisoners were not allowed to assist them while they were incarcerated.

64. A matter of particular concern to health workers and prison officials has been the rise of the human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) in prisons in recent years. As HIV is transmitted, *inter alia*, through anal intercourse and through the use of unsterile needles to inject drugs, behaviours common in most prison systems, there is a real reason to believe that HIV/AIDS will spread faster in prisons than in the community at large. This can only be confirmed by extensive testing for HIV in both the community and in prisons, a course of action that few people would recommend. There is evidence that the incidence of HIV/AIDS seems to be considerably higher in prisons and jails than in the community, but that evidence is not conclusive as testing is not as common in the community as it is in prisons,[21] and few people are tested even in prisons.

65. Many prison systems have introduced extensive education programmes for prisoners and staff in order to increase awareness of the spread of HIV/AIDS. The World Health Organization guidelines on HIV infection and AIDS in prisons, developed in cooperation with the Crime Prevention and Criminal Justice Branch, offer a comprehensive basis for future efforts. The most practical method for preventing the spread of HIV/AIDS may be to make sterile needles and condoms available to prisoners, but this raises serious problems for government officials as it may appear to be condoning illegal or undesirable behaviour. There are also certain operational difficulties. How can prison staff, who are charged with the responsibility of ensuring that illicit drugs are not brought into prisons, issue sterile needles to be used by prisoners for injecting those drugs? One recent alternative approach involves providing for conjugal visits with a view to lowering the level of anal intercourse among prisoners, thereby reducing the incidence of HIV/AIDS.[22]

66. Finally, the highly political and emotional issue of deaths in custody has been the subject of wide discussion and considerable research in a number of countries.[23] The interest in the subject has led to recognition of the need for suicide prevention programmes and training for all custodial staff, and to increased awareness of the need to make adequate provision for the physical and mental health of prisoners. Often people who attempt suicide feel overwhelmed by their problems. Prison staff cannot make such problems disappear, but they can offer support.

67. The Ninth Congress may wish to consider all approaches and policies involved in the treatment of inmates infected with HIV/AIDS and to recommend action in that area. Other issues related to health and accommodation in prisons should also be deliberated, as general improvement in the standard of health care and accommodation will enable advances to be made in dealing with prisoners infected with HIV/AIDS rather than vice versa.

D. Prisoner programmes

68. It is being increasingly recognized throughout the world that the experience of imprisonment must be constructive if the likelihood of further criminal behaviour is to be reduced. That goal can be achieved by providing education, training and treatment programmes specifically designed for that purpose. Such programmes must deal with the real needs of prisoners, instead of conforming to the usual school curricula, and must take into account the fact that prison populations are constantly changing. For those reasons, many prisoner programmes could be delivered by correspondence courses so that individual prisoners could proceed at their own pace. That approach, however, overlooks the motivational value of participation in groups, therefore a mixture of individual and collective activities would be more desirable. Correspondence courses are also unsuitable for the majority of prison populations; namely, prisoners with middle-range intelligence but with lower levels of education and poor self-discipline.

69. Apart from formal and informal educational courses providing for example, basic literacy and numeracy and courses providing training in a vocation or trade, one major development in prisoner programmes in recent years has been the provision of discussion or treatment groups dealing with such issues as anger management, drug, alcohol and nicotine addiction, sexual abuse and other personal and social topics of direct relevance to the offenders' criminality. That approach is seen as having considerable potential, but it has not yet been adequately evaluated.

E. Community involvement

70. Over the past three or four decades, significant changes have been made in the correctional programmes of many countries in order to avoid isolating offenders from the community unless it is absolutely essential to the maintenance of public safety or to the protection of the individual offender. In many countries, probation, parole, community service orders, attendance centre orders and a host of other measures widely accepted by the courts and the general public have been introduced to such an extent that there are many times more convicted offenders serving correctional orders in the community than there are in custody. There is also an increasing number of offenders serving orders that involve some loss of liberty that is less than full confinement. Those orders include weekend imprisonment, periodic detention and home detention, a relatively new development.

71. In addition to this restructuring of the practice of corrections, there has also been a concerted effort in many countries to reduce the social isolation of prisons themselves. That is being done by encouraging visits into prisons by groups and individuals concerned with religion, sport, culture and various aspects of education. Conversely, in enlightened prison systems, prisoners are increasingly being granted short periods of leave to look for jobs or simply to visit their families prior to release. An increasing role is being played

by non-governmental organizations in that area that support official community-related programmes with initiatives at the grass-roots level.

72. All contacts with the community run the risk of being abused. Visitors smuggling drugs into prison pose serious problems for prison administrators, who cannot search every prisoner or visitor.

F. Electronic surveillance

73. The electronic surveillance of offenders may be a relatively inexpensive and effective supplement to the traditional methods of supervising persons on probation or parole. It has also been used in some jurisdictions where accused persons are released on bail while awaiting trial. In some countries, however, after an initial period of enthusiastic support, the measure has fallen out of favour with the judiciary and other criminal justice practitioners.[24] One of the unresolved questions surrounding the use of electronic surveillance has been how to determine who should be placed on this type of regime. Some advocates of the measure see it as appropriate for relatively minor offenders such as those who fail to pay parking fines, while others see it as only appropriate for extremely serious offenders, such as murderers or persons who have repeatedly committed sexual offences, who are about to be released on parole after a lengthy period of incarceration. With such a diversity of views, it is perhaps not surprising that the measure has not yet gained universal support.

74. Possibly the widest application of electronic surveillance in the future will be as an adjunct to home detention, as the random checking of the offender's location by computer-initiated telephone calls is certainly less expensive than physical visits by police or custodial officers. Technologically sophisticated systems that involve the transmission of radio signals by a device worn by the offender may be used, but usually the offender is required to wear a wristband that cannot be removed and that incorporates a unique identifying signal that is transmitted by a telephone. A new development that involves the use of voice identification may reduce the costs considerably.[25] At present, it must be acknowledged that the future of both electronic surveillance and home detention is uncertain. While it is inevitable that technological progress will continue and new control techniques will be introduced, it would be important for the Ninth Congress to consider on the one hand, whether those developments tend to dehumanize the handling of offenders. On the other hand, consideration should also be given to the widening gap between techniques and policies in criminal justice management in developed and developing countries, as exemplified by electronic surveillance.

V. THE ROLE OF LAWYERS

A. Defence of the accused

75. Lawyers play many different roles in criminal justice systems but probably their most noble and humane role is that of defender of people accused of criminal offences. In playing that role, lawyers contribute greatly to the access to justice of members of the community. According to article 11 of the Universal Declaration of Human Rights, adopted by the General Assembly in its resolution 217 A (III), everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. It is doubtful, however, if there has been unfailing respect of that right in any country. Some countries have reached the point where that right is respected if the offence is one that is likely to result in a sentence of imprisonment. While that position may be too costly for many developing countries, there should be no hesitation about the Government providing legal representation to a defendant if the sentence could involve capital or corporal punishment.

76. There are many different approaches that have been developed to ensure that accused persons receive the legal advice and assistance that they need. One traditional approach is for the legal profession itself to provide some of its time and resources, without charge, to defend the poor, as a matter of charity and goodwill. The result is rarely enough to meet the demand, however, and some Governments have created a position known as the public defender, an experienced lawyer who, with the assistance of junior lawyers, defends as many cases as possible. In other countries, Governments have given contracts to private law firms to provide legal representation for accused persons unable to hire their own lawyers.[26] In some countries, elaborate and expensive legal aid schemes, sometimes with separate schemes for indigenous minorities, have been established, but few of the persons working in those schemes would claim that they have adequate resources or personnel. A central issue in the provision of legal defence for poor people accused of committing offences is the quality, or level of skill, of the defence that is provided, as it is sometimes suggested that defence lawyers paid for by the Government are generally less experienced, motivated and competent than private lawyers or prosecutors.

B. Law reform and the advocacy of change

77. Because of the unique training that lawyers have received and because of the experience they gain in the courts, when appearing for either the defence or the prosecution, lawyers are well placed to take an active part in the reform of the law and the criminal justice system. As in most countries the majority of lawyers are independent of the Government, they are also in a strong position to publicly advocate any changes that are needed in the system in the interest of justice, humanity or efficiency. Lawyers can become the conscience of the community as far as criminal justice is concerned.

78. Law reform can be managed in a number of different ways. A Government can change the laws of a country in any way it likes, provided that it continues to comply with international standards and obligations; and it may do so with or without any structured or formal advice. If a Government feels that there is a need for advice on law reform that goes beyond the advice that it receives from its employees, such advice can be provided by special inquiries into particular issues or by permanent law reform commissions or committees. Either of these mechanisms is likely to make extensive use of lawyers, and probably of retired judges.

C. Ombudsmen and administrative review

79. Prompted by the complexity of living in a modern society, and by the increasing awareness of the rights of individuals, many Governments have in recent years created positions or organizations known as ombudsmen, parliamentary commissioners or administrative review tribunals. Such positions, which are almost always filled by lawyers, provide a different dimension to the notion of access to justice than that provided by the courts and alternative dispute resolution models and can be of central relevance to the operation of the criminal justice system. For example, the two elements of the criminal justice system that generally produce the strongest flow of complaints and grievances are the police and prisons. In the interest of maintaining public confidence in the police, it is imperative that any complaints that are made about police conduct are fully investigated by an independent authority, such as an ombudsman. Similarly, if prisoners' grievances are summarily dismissed without reasonable inquiry and investigation, the end result could be riots and other disturbances involving injury and even loss of life. In these and many other areas, lawyers can play a major role in ensuring that the criminal justice system is as fair and reasonable as it possibly can be to all citizens, including those who have broken the law.

80. Persons in the legal profession, and defence lawyers in particular, are facing new challenges presented by organized crime and transnational organized crime. At the European Regional Preparatory Meeting (A/CONF.169/RPM.3 and Corr.1, para. 92), it was noted that there was a need to permit defence lawyers to have appropriate access to international cooperation, including participation in judicial proceedings in foreign

States for the collection of evidence, where appropriate, in the same way as the police and prosecutors. The Ninth Congress may wish to consider the extent to which existing international instruments take into account the requirement of equality of arms between the defence and prosecution in criminal cases. Finally, at the international level, the right to defence has been recently strengthened by the adoption by the General Assembly in its resolution 49/59 of the Convention on the Safety of United Nations and Associated Personnel, a demonstration of the growing internationalization of criminal justice in the wake of an intensification of the peace-keeping role of the United Nations.

81. Finally, the internationalization of crime has alerted criminal justice officials to possible abuses of the right to defence that might create obstacles to the appropriate functioning of justice. It was noted at the European Regional Preparatory Meeting (A/CONF.169/RPM.3 and Corr.1, para. 93) that, in some instances, procedural technicalities raised by defence lawyers led to inadmissible delays in criminal proceedings, while in other cases, defence lawyers played the role of intermediaries between alleged terrorists and justice officials. Consequently, the Ninth Congress may wish to consider how to refine the deontological codes of lawyers in order to ensure the effective and legally correct exercise of the right to defence.

VI. INTERNATIONAL COOPERATION IN SYSTEM MANAGEMENT AND INFORMATION TECHNOLOGY

A. Accountability of criminal justice operations

82. It is important for all aspects of the operation of the criminal justice system to be as accountable as possible in order for the system to gain public trust and respect, nationally and internationally. This means that the system must be open and transparent, as opposed to secretive, vague and unresponsive. While it is always necessary for some parts of the system to be confidential (personal records and criminal intelligence, for example), a system that uses computers to generate clear and understandable information on its operations and that releases such information to the public is more likely to be appreciated and respected than one that does not. It is possible for a criminal justice system to be transparent and open without a significant commitment to computer technology, but computerization entails accountability, even if in the beginning of the automation process there may still be political and administrative hindrances to opening the criminal justice system to more public scrutiny than it was used to with traditional management tools.

83. Accountability of the criminal justice system is part of the concept of good governance.* The implementation of that concept, in turn, warrants the success of a sustainable society, that is, a society that functions in a way that does not jeopardize the resources that will be needed by future generations. Building checks and balances into the criminal justice system by improving its human rights and administrative performance is one way of reducing fear of crime and of increasing public confidence in a just and fair criminal justice process, which is also a scarce resource.

84. An important illustration of the extent to which a system may be described as transparent is the way in which it deals with its own failures and indiscretions. An open and honest system might be embarrassed if one of its members has, for example, broken the law, but it will not hesitate to take action against the recalcitrant member and to draw the matter to the attention of the public. In contrast, a closed and secretive system will invariably try to keep the matter hidden from public attention. The way that an organization responds to its own internal problems may be seen as the strongest single test of its integrity.

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*See the report of the Secretary-General on progress made on the fourth and fifth surveys of crime trends and operations of criminal justice systems, and other initiatives under way to acquire, process and distribute crime prevention and criminal justice data (E/CN.15/1994/2, para. 9).

B. Measurement of crime and criminal justice operations

85. As it is possible for computers to process vast amounts of information in little time, the operation of all stages of the criminal justice system can be monitored more closely than ever before. It must, therefore, be possible for hot spots or log-jams to be quickly identified and for action to be taken to resolve the problems. For example, a sudden increase in the number of accused persons held in pretrial detention can be foreseen and action can be taken to improve the capacity of the courts to ensure a smooth and timely flow of cases. Similarly, at a more mundane level, a computerized criminal justice information system must be able to identify periods and places in which requests for police assistance are higher than usual and that information can be used to guide the allocation of police resources.

86. The above-mentioned issues will be discussed in more detail in a two-day workshop entitled "International cooperation and assistance in the management of the criminal justice system: computerization of criminal justice operations and the development, analysis and policy use of criminal justice information"* to be held within the framework of the Ninth Congress.[27]

C. A global view of crime

87. The advances in computer technology that have occurred in the past decade have made it possible for sufficient data to be collected and analysed to develop for the first time a truly global view of crime and criminal justice. The principal instrument has been the United Nations survey of crime trends and operations of criminal justice systems, which are being conducted biennially. This survey is yielding increasingly valuable findings; however, there is still a need for Member States to provide more systematic and comprehensive information, a point that may be discussed in more detail during the two-day workshop to be held on the basis of an interim report on the results of the Fourth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (A/CONF.169/15). The Ninth Congress may wish to consider this issue and the long-term political, humanitarian and financial benefits stemming from managing the criminal justice in a more humane and efficient way.

D. Evaluation of programmes and procedures

88. One of the most important challenges in the operation of criminal justice systems is that of evaluation. Even though for the past decade a greatly increased sensitivity to the need for proper evaluation of all aspects of criminal justice has developed, in almost every country insufficient resources are devoted to evaluation. One of the reasons for this is that evaluation is often seen as an additional task that is undertaken after a new programme or procedure has been established. Another reason is the fact that criminal justice practitioners are generally not themselves familiar with evaluation methodology and are, therefore, unsure about what needs to be done. A further consideration is the fact that the costs of evaluation can sometimes be excessive, even approaching the costs of the programmes that are to be evaluated. Finally, the built-in resistance to reform makes it difficult to innovate by introducing evaluation. Therefore, the Ninth Congress may wish to consider the development of international standards for the conduct of cost-effective evaluation in criminal justice. Such recommendations would be most welcome and valuable, as they might encourage senior decision makers to consider examples of more modern approaches to criminal justice administration.

E. Privacy and surveillance

89. Another challenge to the integrity of the criminal justice system is the way in which it deals with privacy and surveillance issues. As with many other technological developments, there is a negative as well as a

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*See the background paper for the workshop (A/CONF.169/13).

positive side to the progress facilitated by increasingly powerful computers. In the criminal justice arena the significant advances that have been made need to be balanced against the violations of personal privacy. In particular, care should be taken to ensure respect for the confidentiality of the records of individuals, both offenders and criminal justice personnel: a matter dealt with by the General Assembly in its resolution 45/95, annex, on guidelines for the regulation of computerized personal data files. The possibility that the confidentiality of records may not be respected is an unfortunate side-effect of the whole process of data automation, which increases the availability of records at the risk that they may be misused more often than was the case before automation was introduced. Moreover, restrictions on access to that information are costly and troublesome to establish. This consideration is particularly relevant where integrated criminal justice data systems have been established and, for example, individuals working in different stages of the system may have access to information collected about individuals in other stages of the system.

90. Respect for the confidentiality of records is by no means the only issue related to privacy raised by the expansion of computer technology. Computer technology has moved beyond the stage of storage and retrieval of information to being able to make a direct contribution to criminal justice operations in many areas. In prison security, for example, movement and sound detectors coordinated by computers may be used as a cost-effective adjunct to physical surveillance by prison staff. Also, in the area of non-custodial corrections, electronic surveillance devices activated by computers have been found to be relatively inexpensive and effective. In police investigations, many applications of modern computer technology have been found, including the automatic scanning of many thousands of fingerprint records and the analysis of financial transactions. Even though some of these uses of computer technology have almost become routine, they raise issues relating to the privacy of offenders under surveillance or under investigation.

91. In financial transactions, computer technology may have been as helpful to offenders as it has been to law enforcement officials, as the international electronic transfer of funds is widely used in money-laundering. This type of criminal activity poses serious challenges to all Governments and raises questions about the privacy of records in general. Breach of confidentiality in banking transactions and violations of the privacy of communications or personnel records are practices that are by no means restricted to the borders of one country. General conclusions should be drawn up on the value of information as such and on how, within the framework of national and international criminal law and justice systems, computer-processed data and information may change current legal principles regarding responsibility for perpetrators of criminal acts and regarding efforts to bring them to justice.[28]

92. The subject of computer-related crime has recently been extensively reviewed in the United Nations Manual on the Prevention and Control of Computer-Related Crime,[29] which concluded that a much higher level of international cooperation was needed for progress to be made in that area. The Manual emphasized the need for the laws of different countries to be harmonized in order to avoid the unintentional creation of havens,[30] where offenders using computers unlawfully would either not be prosecuted or would be treated with inappropriate leniency. It may be found necessary for Governments, in future, to impose greater restrictions on the international transfer of funds, as well as on international travel, if money-laundering cannot be controlled by less intrusive means. The Ninth Congress may wish to consider these matters in the light of national and transnational legal developments, as the place of commission of the offence and its legal effect may involve two or more countries.

F. Information exchange and networking

93. Until the 1990s, before the introduction of the international exchange of computerized information on a wide scale, societies formed and dealt with their collective interests and attitudes mostly according to their geopolitical proximity. Global transformations in the 1990s, however, have opened societies to the benefits of more intensive and quick international electronic communication, whereby common interests, rather than only geopolitical proximity, determine groupings of peoples and countries. As the world is increasingly

becoming a global village, cross-cultural exchanges may well make a considerable contribution to international understanding and the cause of peace.

94. The spectacular developments in information exchange in recent years have been almost entirely electronic: the facsimile machine and electronic mail have largely replaced traditional means of correspondence, such as letters, while international computer networks, such as Internet, have created opportunities for rapid communications that were previously unknown. In the field of criminal justice, the United Nations Crime and Justice Information Network (UNCJIN), supported since 1989 by the Bureau of Justice Statistics and, at present, also by the National Institute of Justice, both of the United States Department of Justice, has proved an invaluable tool for persons seeking information and will continue to provide its services after its change of location from the State University of New York at Albany to the United Nations Office at Vienna. The UNCJIN services which are constantly evolving, have been supplemented by a number of smaller networks, or news groups, of criminologists and criminal justice practitioners at the national or regional level.

95. It should be emphasized, however, that the pace of development of UNCJIN may not be commensurate with the overall growth of electronic networking. While, over the past few years, the membership of UNCJIN has increased considerably to about 500 worldwide, Internet is estimated to have about 30 million users. Thus, the international criminal justice community is still at the tail-end of this most advanced technological development.* Consequently, the Ninth Congress may wish to consider action-oriented recommendations on information exchange and networking, especially during the two-day workshop on international cooperation and assistance in the management of the criminal justice system (see document A/CONF.169/13/Add.1) and, more generally, while discussing the increasingly important role of the clearing-house functions of the United Nations crime prevention and criminal justice programme, to be considered under item 3 of the provisional agenda for the Ninth Congress (see document A/CONF.169/4).

VII. CONCLUSIONS

96. A theme underlying many of the issues raised in the present document is the widespread need for improving the level of professionalism, information-gathering, evaluation, technical cooperation, advice and training in the operation of criminal justice systems throughout the world. In particular, the present document draws attention to the need for all countries to give further consideration to the following:

(a) Integrating law enforcement and other criminal justice agencies;

(b) Exploring how relations between the police and the community might be improved;

(c) Privatizing some law enforcement and justice functions;

(d) Creating more cooperative criminal justice systems and improving communications between the elements of those systems;

(e) Drawing on alternative dispute resolution procedures, including mediation and conciliation, restitution and compensation;

(f) Determining appropriate levels of independence and accountability that should apply to prosecutors;

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*See also the report of the Secretary-General on progress made in the implementation of General Assembly resolutions 46/152, 47/91 and 48/103 (A/49/593, para. 79).

(g) Introducing techniques and approaches that will assist in the conduct of complex criminal trials;

(h) Devising strategies to reduce pretrial custody and prison overcrowding, including non-custodial correctional measures;

(i) Improving international cooperation.

97. As for international cooperation, it is apparent that greater efforts are needed to promote and facilitate the repatriation of foreign prisoners, to explore further developments in extradition and mutual assistance, and to expand the availability of technical cooperation, especially with regard to training, study tours and the donation of information technology equipment and expertise.

98. Technical cooperation, advice and training are pressing needs in developing countries. But there is also a need for even the most technologically advanced societies to improve their performance in relation to the collection and dissemination of information, and to the scientific evaluation of their programmes and policies. No country can be fully confident that there is no violation of human rights in some parts of its criminal justice system as there is a noticeable lack of transparency in at least some parts of most systems. If effective monitoring of the criminal justice system is to be achieved, if exchange of information is to be enhanced, and if the coordination of technical cooperation, advice and training is to be improved, it is essential to examine closely constraints, traditions and existing policies in order to adapt them to respond better to the threatening changes that the world is experiencing as a result of the growing sophistication and transnationalization of crime.

Notes

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[3]J. Braithwaite, *Crime, Shame and Reintegration* (Cambridge, Cambridge University Press, 1989).

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[5]P. Stenning, "Private policing - Some recent myths, developments and trends", in *Private Sector and Community Involvement in the Criminal Justice System*, D. Biles and J. Vernon, eds. (Canberra, Australian Institute of Criminology, 1994), pp. 145-156.

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[7]R. Harding, "Private prisons in Australia", *Trends and Issues*, No. 36 (Canberra, Australian Institute of Criminology, 1992).

[8]*Eighth United Nations Congress* ..., chap. I, sect. C.26.

[9]See Thomas G. Snow, "Some unusual features of the U.S. criminal justice systems: the impact of federation on international criminal matters and the plea bargaining system", *Resource Material Series, No. 44* (Tokyo, Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, 1993), pp. 83-91.

[10]See Peter J. P. Tak, *The Legal Scope of Non-Prosecution in Europe*, Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, Publication Series No. 8 (Helsinki, 1986); and *Non-Prosecution in Europe: Report of the European Seminar held in Helsinki, Finland, 22-24 March 1986*, Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, Publication Series No. 9 (Helsinki, 1986).

[11]*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2.

[12]M. B. Blankenship, T. B. Spargar and W. B. Janikowski, "Accountability v. independence: myths of judicial selection", *Criminal Justice Policy Review*, No. 6, 1992, pp. 69-79.

[13]S. Roy, "Victim meets offender: a comparative study on juveniles and adults in a midwestern county", *Journal of Comparative Criminal Justice*, No. 9, 1993, pp. 117-131.

[14]See also *Commentary on the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)* (ST/CSDHA/22).

[15]J. D. Jackson and S. Doran, "Conventional trials in unconventional times: the Diplock court experience", *Criminal Law Forum*, No. 4, 1993, pp. 503-520.

[16]See George T. Felkenes, "Extraterritorial criminal jurisdiction: its impact on criminal justice", *Journal of Criminal Justice*, vol. 21, No. 6 (1993), pp. 183-194.

[17]J. Walker, *Outcomes of Remand in Custody Orders* (Canberra, Australian Institute of Criminology, 1986).

[18]*Human Rights and Pre-trial Detention: a Handbook of International Standards relating to Pre-trial Detention* (United Nations publication, Sales No. E.94.XIV.6).

[19]See Katarina Tomaševski, *Foreigners in Prison*, Publication Series No. 24 (Helsinki, European Institute for Crime Prevention and Control, affiliated with the United Nations, May 1994).

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[26]A. P. Worden, "Counsel for the poor: evaluation of contracting for indigent criminal defence", *Justice Quarterly*, No. 10, 1993, pp. 613-637.

[27]See also *Guide to Computerization of Information System in Criminal Justice* (United Nations publication, Sales No. E.92.XVII.6); and *Directory of Criminal Justice Information Programs*, Publication Series No. 21 (Helsinki, European Institute for Crime Prevention and Control, affiliated with the United Nations, 1992).

[28]See also Albin Eser and Otto Lagodny, eds., *Principles and Procedures for a New Promotional Criminal Law: Document of Paper presented at the International Workshop for More Effective International Cooperation* (Freiburg, Germany, Max Planck Institute for Foreign International Criminal Law, 1991).

[29]"United Nations Manual on the Prevention and Control of Computer-Related Crime", *International Review of Criminal Policy*, Nos. 43 and 44, 1994 (United Nations publication, Sales No. E.94.IV.5), paras. 293-294.

[30]Ibid., para. 292.